

HOUSE BILL No. 1339

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-2.3-3-8; IC 8-1; IC 8-1.5; IC 8-9.5-9-2; IC 32-28-3; IC 34-30-2-24.2.

Synopsis: Electric utility programs for local governments. Allows counties and municipalities, including municipalities owning electric utilities, to form joint agencies to jointly own and operate projects to provide retail electric service to ratepayers in the participating units. Allows a member municipality that owns an electric utility to contribute all or part of the facilities or assets of its utility to the joint agency under certain conditions. Provides for the representation of each member unit on a board of directors of the joint agency. Provides that ratepayers in the member units directly elect representatives on the board. Allows a member unit that does not: (1) contribute its electric utility assets to the joint agency; or (2) possess an undivided interest in a project of the joint agency; to enter into a contract with the joint agency to purchase power from the joint agency. Allows a joint agency to acquire an electric utility to provide retail service to ratepayers in member units already served by a public utility. Provides that a joint agency has the power of eminent domain in acquiring a project, including the power to condemn an existing electric facility. Establishes procedures for: (1) the compensation of a public utility for any of its utility property acquired by a joint agency; and (2) the establishment of a service area for the electric utility of the joint

(Continued next page)

Effective: Upon passage; July 1, 2004.

Pelath, Stevenson

January 15, 2004, read first time and referred to Committee on Commerce and Economic Development.

C
o
p
y



agency. Provides that a certificate of public convenience and necessity is not required for a joint agency's project to provide retail electric service, if the utility regulatory commission approves: (1) the project; (2) a service area for the project; and (3) any bonds issued in connection with the project. Allows the following to own and operate joint projects: (1) Joint agencies. (2) Eligible units. (3) Public utilities. Allows joint agencies and eligible units to issue bonds to finance a project or joint project. Allows a joint agency to sell excess capacity or output from a project or joint project if the joint agency uses the proceeds of the sale to: (1) promote energy conservation; (2) provide sustainable energy products or services; or (3) reduce rates and charges for ratepayers.

**C
o
p
y**



Introduced

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

HOUSE BILL No. 1339

A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-2.3-3-8, AS ADDED BY P.L.192-2002(ss),
2 SECTION 47, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2004]: Sec. 8. Gross receipts do not include amounts received
4 by a joint agency established under IC 8-1-2.2 **or IC 8-1-8.9** that
5 constitutes a payment by a municipality that is a member of the joint
6 agency for electrical energy that will be sold by the municipality to
7 retail customers.

8 SECTION 2. IC 8-1-2-86 IS AMENDED TO READ AS FOLLOWS
9 [EFFECTIVE JULY 1, 2004]: Sec. 86. (a) ~~No~~ **As used in this section,**
10 **"joint agency" refers to a joint agency created under IC 8-1-8.9.**

11 **(b) As used in this section, "participating unit" has the meaning**
12 **set forth in IC 8-1-8.9-12.**

13 **(c) Except as provided in subsections (d) and (e), a license,**
14 **permit, or franchise shall may not** be granted to any person,
15 copartnership, or corporation to own, operate, manage, or control any



C
O
P
Y

1 plant or equipment of any public utility in any municipality where there
 2 is in operation a public utility engaged in similar service under a
 3 license, franchise, or permit without first securing from the commission
 4 a declaration, after a public hearing, of all parties interested, that public
 5 convenience and necessity require ~~such~~ a second public utility.
 6 ~~provided; that~~

7 (d) Any municipality may purchase, condemn, and operate, or
 8 construct and operate, a utility in ~~such~~ the municipality for the purpose
 9 of transportation, production, transmission, delivery, sale, and
 10 furnishing of heat, light, water, ~~and/or~~ or power to: ~~such~~

11 (1) the municipality; ~~and/or~~

12 (2) the public in, ~~and or~~ within six (6) miles of, the corporate
 13 limits of ~~such~~ the municipality; or

14 (3) both entities described in subdivisions (1) and (2);

15 without the consent of ~~said~~ the commission, ~~although even though~~
 16 there is operating in ~~said~~ the municipality a public utility engaged in a
 17 similar service under a license, franchise, or indeterminate permit.

18 (e) Subject to IC 8-1-8.9, a joint agency may acquire and
 19 operate an electric utility in any participating unit to provide retail
 20 electric service to:

21 (1) the participating unit;

22 (2) ratepayers in, or within six (6) miles of, the corporate
 23 limits of the participating unit; or

24 (3) both entities described in subdivisions (1) and (2);

25 without the consent of the commission, even though there is
 26 operating in the participating unit a public utility engaged in a
 27 similar service.

28 ~~(b)~~ (f) Any permit, license, or franchise in existence on May 1,
 29 1913, ~~which shall that~~ contains any term ~~whatsoever~~ interfering with
 30 the existence of a second public utility is hereby declared to be against
 31 public policy and is hereby amended in ~~such~~ manner so as to permit a
 32 municipality to grant a license, franchise, or permit for the operation of
 33 ~~such~~ a second public utility pursuant to the provisions of in
 34 accordance with this chapter.

35 SECTION 3. IC 8-1-2.3-7 IS ADDED TO THE INDIANA CODE
 36 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 37 1, 2004]: Sec. 7. (a) This section applies if a joint agency seeks to
 38 provide retail electric service to ratepayers in one (1) or more of
 39 the joint agency's participating units in which the service area of
 40 a public utility is located.

41 (b) As used in this section, "joint agency" refers to a joint
 42 agency created under IC 8-1-8.9.

C
o
p
y



(c) As used in this section, "participating unit" has the meaning set forth in IC 8-1-8.9-12.

(d) If a joint agency adopts a resolution under IC 8-1-8.9-24(c) finding that public convenience and necessity require the joint agency's ownership or operation of an electric utility to provide retail electric service to ratepayers in one (1) or more of the joint agency's participating units, the joint agency shall petition the commission to establish an assigned service area for the joint agency's electric utility. If any of the participating units in which the joint agency proposes to provide retail electric service are participating units described in subsection (a), the assigned service area of the joint agency's electric utility may include territory that comprises part or all of the service area of one (1) or more public utilities providing retail electric service in the participating units at the time the resolution under IC 8-1-8.9-24(c) is adopted.

(e) The joint agency shall file a petition under subsection (d) with the commission not later than sixty (60) days after the adoption of the resolution under IC 8-1-8.9-24(c). The petition must include maps depicting the boundaries of:

- (1) the proposed service area of the joint agency's electric utility; and
- (2) the assigned service area of any public utility providing retail electric service within the proposed service area of the joint agency's electric utility at the time the resolution under IC 8-1-8.9-24(c) is adopted.

Not later than sixty (60) days after the date the petition is filed, the commission shall hold a public hearing concerning the proposed service area for the joint agency's electric utility. The commission shall publish notice of the hearing at least ten (10) days before the hearing in each county that contains territory comprising all or part of the joint agency's proposed service area.

(f) If, after the hearing under subsection (e), the commission finds that the proposed service area complies with this chapter, the commission shall, not later than sixty (60) days after the hearing, issue an order that does the following:

- (1) Approves and assigns the joint agency's service area as designated on the prepared maps.
- (2) Changes the assigned service area facet maps of an affected incumbent public utility to reflect the removal from the public utility's assigned service area of any territory comprising all or part of the joint agency's approved service area.

**C
O
P
Y**



(3) Gives to the joint agency the right to serve and take immediate possession of the joint agency's approved service area.

The commission's order is enforceable in court pending any appeal of the order. An appellant from a court order enforcing a commission order is not entitled to a stay of the court order pending the appeal.

(g) Instead of the procedures set forth in subsections (d) through (f) and subject to the approval of the commission, the joint agency and an affected incumbent public utility may agree to:

(1) a change in the assigned service area of the public utility; and

(2) the establishment of a new service area for the joint agency's electric utility;

that enables the joint agency to provide retail electric service to ratepayers in the joint agency's participating units.

(h) If notice of a verified request for a change of boundary lines by mutual agreement under subsection (g) is published in a newspaper of general circulation in each county in which the boundary lines are located, and an affected ratepayer does not request a hearing within twenty (20) days after the last date of publication, the commission may approve the change without a hearing. The commission shall approve a boundary line change under this subsection unless the commission finds, after a public hearing, that the change would cause:

(1) duplication of electric utility facilities;

(2) waste of materials or resources; or

(3) uneconomic, inefficient, or inadequate electric service to the public.

(i) Not later than thirty (30) days after the commission issues an order under subsection (f) or approves a change of boundary lines under subsection (h), the joint agency shall proceed to acquire any property of the public utility necessary for the joint agency's ownership or operation of the proposed electric utility in accordance with IC 8-1-8.9-24.

SECTION 4. IC 8-1-8.5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. (a) As used in this chapter, "public utility" means a:

(1) public, municipally owned, or cooperatively owned utility; or

(2) joint agency created under IC 8-1-2.2; or

(3) a joint agency created under IC 8-1-8.9 that is a participating entity (as defined in IC 8-1-8.9-11) in a joint

C
o
p
y



project under IC 8-1-8.9-29.

(b) As used in this chapter, "public utility service" means the service rendered by a public utility.

SECTION 5. IC 8-1-8.9 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]:

Chapter 8.9. Electric Utility Programs for Local Governments

Sec. 1. The general assembly makes the following findings:

(1) Counties and municipalities serve a public purpose by providing ratepayers with an adequate, a reliable, and an economical supply of electric power and energy.

(2) Individually, certain counties and municipalities lack the financial resources to plan, finance, develop, construct, reconstruct, acquire, improve, enlarge, own, and operate needed facilities for the generation and transmission of electric power and energy, and to operate or manage the facilities.

(3) By jointly owning and operating an electric utility, one (1) or more counties or municipalities may be able to provide electric power and energy to ratepayers in the participating units at rates lower than the rates charged by investor owned public utilities that have fiduciary obligations to shareholders.

(4) By jointly owning and operating an electric utility, one (1) or more counties or municipalities may be able to provide more reliable electric service to ratepayers in the participating units by:

(A) retaining local control of the electric utility; and

(B) using local workers who do not have to be dispatched from a remote location in the event of a service interruption.

(5) It serves a public purpose to provide a method for counties and municipalities to:

(A) form joint agencies to jointly plan, finance, develop, construct, reconstruct, acquire, improve, enlarge, own, and operate electric utilities for the provision of retail electric service to ratepayers in the participating units; and

(B) finance, develop, own, manage, and operate, either by themselves or with public utilities or other joint agencies, joint projects to provide electric generation and transmission facilities appropriate to:

(i) the present and projected electric energy needs of the participating units; and

C
o
p
y



(ii) the changes in the electric utility industry affecting the participating units.

Sec. 2. As used in this chapter, "board" refers to the board of directors of a joint agency created under section 16 of this chapter.

Sec. 3. As used in this chapter, "bonds" means electric utility revenue bonds, notes, and other evidences of indebtedness issued under this chapter by an eligible unit or a joint agency.

Sec. 4. (a) As used in this chapter, "business" means any individual, firm, partnership, corporation, limited liability company, or other organized group of persons, whether incorporated or not, that carries out a business, including a nonprofit business.

(b) The term includes a business engaged primarily in the manufacture or production of products, raw materials, or agricultural commodities.

(c) The term does not include a political subdivision.

Sec. 5. As used in this chapter, "cost" or "cost of a project" refers to the cost of the acquisition, construction, reconstruction, improvement, enlargement, betterment, extension, decommissioning, or disposal of a project or part of a project, including the following:

(1) The cost of studies, plans, specifications, surveys, and estimates of costs and revenues.

(2) The cost of land, land rights, rights-of-way and easements, water rights, fees, permits, approvals, licenses, certificates, franchises, and the preparation of applications.

(3) Administrative, legal, engineering, and inspection expenses.

(4) Financing fees, expenses, and costs.

(5) Working capital.

(6) Initial fuel costs.

(7) Interest on bonds during the period of construction of the project and for a reasonable period after construction, as determined by the issuing eligible unit or joint agency.

(8) Establishment of reserves for the payment of debt service, for renewals and replacements, for working capital, for operating expenses, and for any other reasonable and proper purposes.

(9) All other expenditures of an eligible unit or a joint agency incidental, necessary, or convenient to the acquisition, construction, reconstruction, improvement, enlargement, betterment, extension, decommissioning, or disposal of the

**C
O
P
Y**



project and the placing of the project in operation.

Sec. 6. As used in this chapter, "eligible unit" means either of the following:

(1) A county.

(2) A municipality.

The term includes a municipality, or any board, agency, or commission of a municipality, that owns and operates an electric utility.

Sec. 7. As used in this chapter, "governing body" means the legislative body of an eligible unit or the board of directors of a joint agency.

Sec. 8. As used in this chapter, "joint agency" means an agency created by two (2) or more eligible units under section 16 of this chapter. Unless otherwise provided in this chapter, the term does not include a joint agency created under IC 8-1-2.2.

Sec. 9. As used in this chapter, "joint project" means a project that is jointly owned or operated by one (1) or more participating entities under section 29 of this chapter.

Sec. 10. As used in this chapter, "member" or "member unit" means an eligible unit that participates with one (1) or more other eligible units in a joint agency created under section 16 of this chapter.

Sec. 11. As used in this chapter, "participating entity" means:

(1) an eligible unit;

(2) a joint agency; or

(3) a public utility;

that jointly owns or operates a joint project with one (1) or more other eligible units, joint agencies, or public utilities under section 29 of this chapter.

Sec. 12. As used in this chapter, "participating unit" means a member of a joint agency that participates with one (1) or more other members of the joint agency in a project of the joint agency under section 20 of this chapter.

Sec. 13. (a) As used in this chapter, "project" means any plant, works, system, or facility, and other real or personal property of any nature, necessary to or convenient in:

(1) the generation, transmission, transformation, purchase, sale, exchange, or interchange of electric power, energy, or steam; or

(2) the development, production, manufacture, procurement, handling, storage, fabrication, enrichment, processing, or reprocessing of fuel of any kind.

C
o
p
y



(b) The term includes any facility or rights with respect to the supply of water for the plant, works, system, or facilities described in subsection (a), including rights to the use, output, or capacity of the supply of water.

(c) The term does not include a transmission contract entered into under section 18(a)(14) of this chapter.

Sec. 14. As used in this chapter, "public utility" means a public utility (as defined in IC 8-1-2-1) engaged in the generation, transmission, or distribution of electric power and energy.

Sec. 15. As used in this chapter, "ratepayer" means a residential or business customer of an electric utility owned or operated by:

- (1) an eligible unit, if the eligible unit is a municipality that owns or operates an electric utility under IC 8-1.5; or
- (2) a joint agency created under section 16 of this chapter.

Sec. 16. (a) The governing bodies of two (2) or more eligible units may create a joint agency to plan, finance, develop, construct, reconstruct, acquire, improve, enlarge, own, and operate one (1) or more projects to supply electric power and energy for the present or future electricity needs of:

- (1) residents of the eligible units;
- (2) businesses located in the eligible units; and
- (3) the eligible units.

A joint agency created under this chapter is a body corporate and politic and a political subdivision of the state. In exercising its powers under this chapter, a joint agency exercises a part of the sovereign powers of the state. The activities of the joint agency in carrying out the purposes of this chapter constitute state action.

(b) Before creating a joint agency under this chapter, the governing body of each eligible unit must determine whether the creation of the joint agency is in the best interests of the eligible unit. In making a determination under this subsection, a governing body shall consider the following:

- (1) Whether cost reduction, efficiencies, or other advantages may be realized by creating a joint agency.
- (2) Whether better financial market acceptance may result if a joint agency is responsible for issuing all of the bonds for a project in a timely and orderly manner and with uniform credit ratings, as opposed to multiple eligible units making separate bond issues.
- (3) Whether the joint ownership and operation of one (1) or more projects to supply electric power and energy will result in lower electric utility rates and improved electric utility

C
O
P
Y



service for ratepayers in the eligible unit.

(4) If the eligible unit is a municipality that owns or operates an electric utility under IC 8-1.5, whether the eligible unit's ratepayers would be adversely affected if the eligible unit:

(A) contributes all or any part of the facilities and assets of the eligible unit's electric utility to the joint agency; or

(B) allows all or any part of the facilities of the eligible unit's electric utility to be used by the joint agency;

to enable the joint agency to provide retail electric service to ratepayers of the joint agency, including ratepayers not located within the eligible unit's corporate boundaries.

(c) If the governing body of an eligible unit described in subsection (b)(4) determines that the eligible unit's ratepayers will not be adversely affected, the governing body may, in the joint agreement executed under subsection (f), agree to:

(1) contribute all or any part of the facilities and assets of the eligible unit's electric utility to the joint agency; or

(2) allow all or any part of the facilities of the eligible unit's electric utility to be used by the joint agency;

to enable the joint agency to provide retail electric service to ratepayers of the joint agency, including ratepayers not located within the eligible unit's corporate boundaries. However, if the governing body determines that contributing or allowing the use of all or any part of the assets or facilities of the eligible unit's electric utility is not in the best interests of the eligible unit's ratepayers, the eligible unit may not agree to contribute or allow the use of the assets or facilities.

(d) This subsection applies to an eligible unit that determines not to contribute or allow the use of the eligible unit's electric utility facilities or assets in accordance with subsection (c). An eligible unit to which this subsection applies may nevertheless participate in a joint agency and do any of the following as a member of the joint agency, subject to the agreement of all other members of the joint agency:

(1) Plan, finance, develop, construct, reconstruct, acquire, improve, enlarge, own, and operate one (1) or more projects to supply electric power and energy to the ratepayers in the participating units and to the participating units themselves.

(2) Enter into a contract under section 19 of this chapter to purchase power and energy and related services from the joint agency.

(3) Sell excess capacity or output from the eligible unit's

**C
O
P
Y**



electric utility to the joint agency under section 25(d) of this chapter.

(e) Each governing body that determines under subsection (b) that it is in the best interests of the eligible unit to create a joint agency with one (1) or more other eligible units shall adopt a mutually acceptable ordinance that includes the following:

(1) A finding that the creation of the joint agency is in the best interests of the eligible unit. If the eligible unit is a municipality that owns or operates an electric utility under IC 8-1.5, the finding under this subdivision must include one (1) of the following:

(A) If the governing body has determined under subsection (c) that the eligible unit should contribute or allow the use of all or any part of the eligible unit's electric utility facilities or assets, a finding that contributing or allowing the use of the facilities or assets will not adversely affect the eligible unit's ratepayers.

(B) If the governing body has determined not to contribute or allow the use of the eligible unit's electric utility facilities or assets in accordance with subsection (c), a finding that the eligible unit should nevertheless participate in the joint agency for one (1) or more of the purposes described in subsection (d), subject to the agreement of the other member units.

(2) The names of one (1) or more other eligible units that will be members of the joint agency.

(3) A provision authorizing the eligible units described in subdivision (2) to enter into a joint agreement for the creation of the joint agency.

(4) The names and addresses of two (2) directors appointed by the governing body to serve on the initial board of directors of the joint agency. The governing body may appoint any of the following to serve as a director on the initial board under this subdivision:

(A) An officer or employee of the eligible unit, including a member of the governing body.

(B) A member or employee of the board described in IC 8-1.5-3-3(a), if the eligible unit is a municipality that owns or operates an electric utility under IC 8-1.5.

(C) Any other person who:

(i) is a resident of the eligible unit or the owner of a business located in the eligible unit; and

**C
o
p
y**



(ii) is qualified by experience or knowledge of the utility industry to represent the eligible unit on the board.

The governing body shall appoint one (1) director to serve a term of two (2) years and one (1) director to serve a term of four (4) years.

(f) After the governing body of each eligible unit that will participate in the joint agency adopts an ordinance under subsection (e), the eligible units may create a joint agency under this chapter by executing a written joint agreement. The agreement must set forth the following:

(1) The name of the joint agency and the names of the member units.

(2) The purposes for which the joint agency is created, including a description of any planned or existing project or joint project to be owned or operated by the joint agency under section 20 or 29 of this chapter.

(3) For each member unit that is a municipality owning or operating an electric utility under IC 8-1.5, one (1) of the following:

(A) A description of the facilities or assets of the member unit's electric utility that will be contributed to or used by the joint agency to provide retail electric service to ratepayers of the joint agency.

(B) A statement that the facilities or assets of the member unit's electric utility will not be contributed to or used by the joint agency, but that the member unit will participate in the joint agency for one (1) or more of the purposes described in subsection (d).

(4) The names and addresses of the directors initially appointed to the board of directors by each member unit under subsection (e)(4).

(5) The terms and conditions, if any, under which additional eligible units may join the joint agency.

(6) Any other provision agreed to by the member units and necessary for the creation of the joint agency.

A copy of the agreement shall be filed with the commission, the secretary of state, and the recorder of each county in which a member unit is located.

Sec. 17. (a) A board of directors serves as the governing body of a joint agency. The initial board of directors consists of the directors appointed by the member units under section 16(e)(4) of this chapter. An initial director serves at the pleasure of the

**C
o
p
y**



governing body that appointed the director. Not later than ten (10) days after the agreement to create the joint agency is executed under section 16(f) of this chapter, the initial directors shall meet to determine the following:

(1) A method for ratepayers from each member unit to elect directors to the board following the expiration of the terms of the initial directors. The method for electing directors may include any of the following:

(A) In person voting, at a special election or in conjunction with a regularly scheduled election of a member unit.

(B) Voting by a ballot included in a periodic billing to ratepayers, if the joint agency will own or operate an electric utility providing retail electric service to ratepayers.

(C) Voting through any other method that the initial directors consider appropriate and fair, given the resources and number of ratepayers of the respective member units.

(2) The terms of directors elected after the expiration of the terms of the initial directors. The terms may not exceed four (4) years. After the expiration of an initial director's term, the initial director may be elected to the board by the ratepayers of the member unit that the initial director represents.

(3) A method for determining the number of votes to which each director from a member unit is entitled. Each director is entitled to at least one (1) vote and may have an additional number of votes as agreed to by the initial directors and set forth in the joint agency's bylaws, which are subject to amendment by future boards. In determining the number of additional votes, if any, to which a director from a member unit may be entitled, the directors shall first determine the total number of votes to be allotted for all directors on the board. A director from a member unit is entitled to a number of votes that bears the same proportion to the total number of votes allotted for all directors as:

(A) the number of ratepayers from the member unit bears to the total number of ratepayers from all member units; or

(B) the amount of money, property, or other consideration contributed by the member unit for a project bears to the total amount of money, property, or other consideration contributed by all member units for the project.

C
o
p
y



1 (4) Instead of, or in addition to, assigning additional votes to
 2 directors from the member units under subdivision (3), the
 3 initial directors may determine that the ratepayers of a
 4 member unit should be allowed to elect one (1) or more
 5 additional directors to the board after the expiration of the
 6 terms of the member unit's initial directors. In determining
 7 the number of additional directors, if any, that the ratepayers
 8 from a member unit may elect, the initial directors shall first
 9 determine the total number of directors from all member
 10 units to serve on the board. The ratepayers from a member
 11 unit shall elect the number of directors that bears the same
 12 proportion to the total number of directors from all member
 13 units as:

14 (A) the number of ratepayers from the member unit bears
 15 to the total number of ratepayers from all member units;
 16 or

17 (B) the amount of money, property, or other consideration
 18 contributed by the member unit for a project bears to the
 19 total amount of money, property, or other consideration
 20 contributed by all member units for the project.

21 A determination to allow the election of additional directors
 22 under this subdivision must be set forth in the joint agency's
 23 bylaws, which are subject to amendment by future boards.

24 The determinations made under subdivisions (1) through (4) must
 25 be agreed to by a majority of the initial directors appointed to the
 26 board.

27 (b) Each appointed or elected director, before entering upon the
 28 director's duties, shall take and subscribe to an oath to execute the
 29 duties of the director's office faithfully and impartially. The oath
 30 shall be taken and subscribed to before a person authorized by law
 31 to administer oaths. A record of the oath shall be filed with the
 32 governing body of the member unit that the director represents
 33 and shall be entered in the governing body's minutes.

34 (c) The board shall annually elect, from among the board's
 35 membership, a chairperson and a vice chairperson. The board
 36 shall also annually elect, from among the board's membership or
 37 otherwise, one (1) person to serve as treasurer of the joint agency
 38 and one (1) person to serve as secretary of the joint agency, or one
 39 (1) person to serve as both treasurer and secretary of the joint
 40 agency. The board may annually elect one (1) or more assistant
 41 secretaries. The office of treasurer may be held by an assistant
 42 secretary. The secretary or assistant secretary shall keep a record

C
O
P
Y



1 of the joint agency's proceedings. The secretary is the custodian of
 2 all records, books, documents, and papers filed with the joint
 3 agency, the minute book or journal of the joint agency, and the
 4 joint agency's official seal. The secretary or an assistant secretary
 5 may cause copies to be made of the joint agency's minutes, records,
 6 and other documents and may certify, under the official seal of the
 7 joint agency, that the copies are true copies. A person dealing with
 8 the joint agency may rely upon the secretary's or assistant
 9 secretary's certification of a copy under this subsection.

10 (d) A majority of the directors of a joint agency constitute a
 11 quorum. A vacancy on the board does not impair the right of a
 12 quorum to exercise the rights and perform the duties of the joint
 13 agency. Any action taken by the joint agency under this chapter
 14 may be authorized by resolution at a regular or special meeting of
 15 the board, and each resolution takes effect immediately without the
 16 need for publication or posting of the resolution. A contract
 17 approved by a resolution of the board may provide that an action
 18 may be taken under a delegation provision in the contract if the
 19 action taken is consistent with prudent utility practice. If the
 20 directors present at a meeting of the board are entitled to cast a
 21 majority of the total votes held by all directors on the board, the
 22 board may take any action or pass any resolution upon a majority
 23 vote of the directors present at the meeting.

24 (e) Except as provided in this subsection, a director may not
 25 receive from the joint agency any compensation for the
 26 performance of the director's duties under this chapter. However,
 27 a director may be paid the director's necessary expenses incurred
 28 while engaged in the performance of the director's duties. In
 29 addition, a member unit may pay a director representing the
 30 member unit up to fifteen dollars (\$15) per day for each day or
 31 fraction of a day the director is engaged in the performance of
 32 duties under this chapter, but only if the director is not a person
 33 holding a lucrative office.

34 (f) The board may create an executive committee of the board
 35 of directors. The board may provide for the composition of the
 36 executive committee. The executive committee shall exercise the
 37 powers and authority of the board during the intervals between the
 38 board's meetings, as prescribed in the bylaws of the joint agency.
 39 The terms of office of the members of the executive committee and
 40 the method of filling vacancies on the executive committee must be
 41 set forth in the bylaws of the joint agency.

42 Sec. 18. (a) The board of directors has all the rights and powers

**C
o
p
y**



necessary or convenient to carry out the purposes of this chapter,
including the following:

(1) To adopt bylaws for the regulation of the affairs of the joint agency and the conduct of the joint agency's business, and to prescribe rules and policies in connection with the performance of the joint agency's functions and duties.

(2) To adopt an official seal of the joint agency.

(3) To maintain an office at a place determined by the board.

(4) To sue and be sued in the name of joint agency and to plead and be impleaded.

(5) To receive, administer, and comply with the conditions and requirements of a gift, grant, or donation of property or money.

(6) To acquire by purchase, lease, gift, or otherwise, or to obtain options for the acquisition of, real or personal property, whether improved or unimproved, including an interest in land that is less than fee simple.

(7) To sell, lease, exchange, transfer, or otherwise dispose of, or to grant options with respect to, real or personal property or an interest in real or personal property.

(8) To pledge or assign:

(A) money, rents, charges, or other revenues and proceeds derived by the joint agency from the sale of bonds, property, or insurance, or from condemnation proceedings; or

(B) any contracts or other rights of the joint agency.

(9) To issue bonds of the joint agency under section 36 of this chapter to pay for all or a part of the costs of any projects, joint projects, or other purposes authorized by this chapter.

(10) As allowed under section 20 or 29 of this chapter, to study, plan, finance, construct, reconstruct, acquire, improve, enlarge, better, own, operate, and maintain individually or jointly with one (1) or more other joint agencies, eligible units, or public utilities a project or a joint project, and to pay all or a part of the costs of the project or joint project from the proceeds of bonds of the joint agency or from any other funds available to the joint agency.

(11) To generate, produce, transmit, deliver, exchange, purchase, or sell for resale only, electric power or energy, including transmission and related services, and to enter into contracts concerning the activities described in this subdivision.

**C
o
p
y**



(12) To fix, charge, and collect rents, rates, fees, and charges for electric power or energy and for other services, facilities, and commodities sold, furnished, or supplied by the joint agency.

(13) As allowed under section 19 of this chapter, to negotiate and enter into a contract with a member unit to allow the member unit to purchase power and energy and related services from the joint agency.

(14) To make and execute contracts and other instruments necessary or convenient for the operation, maintenance, and management of a regional transmission system, including transmission facilities owned by a member unit or the joint agency. A contract under this subdivision may not:

(A) be for a term that is more than fifty (50) years; or

(B) make the state or any political subdivision of the state a shareholder in a public utility.

However, the contract may delegate responsibilities if the delegation and action taken are consistent with prudent utility practice.

(15) To make and execute contracts and other instruments necessary or convenient in the exercise of the powers and functions of the joint agency under this chapter, including contracts with individuals, firms, corporations, limited liability companies, and other persons.

(16) To employ engineers, attorneys, financial advisers, and other consultants, agents, and employees as the board considers necessary, and to fix and pay the compensation of the persons employed. Compensation under this subdivision must be paid from funds of the joint agency designated and available for that purpose.

(17) To perform any other act necessary, convenient, or desirable to carry out the purposes of, and to exercise the powers granted to, the joint agency or the board.

(b) A joint agency's determination on a matter is conclusive if the determination is approved by the commission, unless a party aggrieved by the commission's approval files a notice of appeal under IC 8-1-3.

Sec. 19. (a) This section applies to any of the following:

(1) A member unit that:

(A) is a municipality that owns or operates an electric utility under IC 8-1.5; and

(B) does not contribute or allow the use of the electric

**C
o
p
y**



- 1 utility's facilities or assets in accordance with section 16(c)
 2 of this chapter.
- 3 (2) A member unit that does not acquire an undivided interest
 4 in a project of the joint agency under section 20 of this
 5 chapter.
- 6 (b) A member unit may enter into a contract to purchase power
 7 and energy and related services from the joint agency. The
 8 contract may provide that the member unit is to purchase power
 9 and energy derived from one (1) or more projects or may allow the
 10 member unit to purchase power and energy without designation as
 11 to source. Payments made by the member unit for purchases under
 12 the contract must be sufficient to enable the joint agency to do the
 13 following:
- 14 (1) Pay when due (whether at maturity, upon acceleration, or
 15 by sinking fund requirements) the principal, premium, if any,
 16 and interest on all bonds issued by the joint agency to finance
 17 any service provided to the member unit.
- 18 (2) Pay the necessary expenses of the joint agency, including
 19 all amounts required to be collected under a trust agreement
 20 or resolution providing for the issuance of bonds.
- 21 (3) Establish reserves for payments described in subdivisions
 22 (1) and (2).
- 23 (c) A contract under this section may provide for any of the
 24 following:
- 25 (1) That the member unit is obligated to make the payments
 26 required by the contract whether or not a project is
 27 completed, operable, or operating, and notwithstanding the
 28 suspension, interruption, interference, reduction, or
 29 curtailment of:
- 30 (A) the output of a project; or
 31 (B) the power and energy to be purchased.
- 32 (2) That the payments under the contract may not be:
- 33 (A) subject to any reduction, whether by offset or
 34 otherwise; or
 35 (B) conditioned upon the performance or nonperformance
 36 of the joint agency's or a member unit's obligations under
 37 the contract or any other instrument.
- 38 (d) A contract under this section may include a requirements
 39 arrangement or an exclusive dealings arrangement if the board
 40 determines that the arrangement is necessary to obtain financing
 41 on favorable terms.
- 42 (e) Notwithstanding the provisions of any other law, a contract

C
o
p
y



under this section may not extend for a period exceeding fifty (50) years from the date service is first rendered under the contract. The execution and effectiveness of the contract may not be conditioned on any authorizations or approvals by the state or any agency, commission, instrumentality, or political subdivision of the state, except as specifically required under this chapter. A contract under this section is not subject to any publication requirements.

(f) The member unit shall make the payments required under the contract only from the following sources:

(1) The proceeds of bonds issued under section 36 of this chapter by the member unit.

(2) The proceeds of the ownership and operation of any part of the member unit's municipally owned electric utility, if the member unit is a municipality that owns or operates an electric utility under IC 8-1.5. Payments made from the proceeds described in this subdivision may be treated as an expense of the operation and maintenance of the member unit's electric utility, if permitted under the terms of the contract.

(3) A combination of the proceeds described in subdivisions (1) and (2).

(g) An obligation of the member unit under the contract does not constitute a legal or equitable pledge, charge, lien, or encumbrance upon:

(1) the member unit's property, including the facilities or assets of the member unit's electric utility, if the member unit owns or operates an electric utility under IC 8-1.5; or

(2) the member unit's income, receipts, or revenues, except the revenues of member unit's electric utility, if the member unit owns or operates an electric utility under IC 8-1.5.

Neither the taxing power nor the faith and credit of the member unit are, or may be, pledged for the payment of an obligation of the member unit under the contract.

(h) This subsection applies to member unit that makes payments under the contract from sources described in subsection (f)(2) or (f)(3). The member unit shall fix, charge, and collect rents, rates, fees, and charges for:

(1) electric power and energy; and

(2) other services, facilities, and commodities;

sold, furnished, or supplied through the member unit's electric utility in an amount sufficient to provide revenues adequate to meet the member unit's obligations under the contract and to pay

C
o
p
y



all other amounts payable from or constituting a charge and lien upon the electric utility's revenues.

(i) This subsection applies to a member unit that:

- (1) makes payments under the contract from sources described in subsection (f)(2) or (f)(3); and
- (2) is subject to the jurisdiction of the commission for the approval of the rates and charges of the member unit's electric utility.

In a proceeding before the commission for the approval of the rates and charges set by the member unit, the commission shall make specific findings concerning the revenue required to allow the member unit to meet the obligations described in subsection (h). The commission may approve the member unit's proposed rates and charges only if the commission determines that the rates and charges are sufficient to produce the revenue required.

(j) In executing a contract under this section, a member unit and a joint agency are exercising a part of the sovereign powers of the state and are exempt from any and all laws, rules, and regulations prohibiting, limiting, or conditioning anticompetitive conduct.

Sec. 20. (a) Subject to section 45 of this chapter, a joint agency may plan, finance, develop, construct, reconstruct, acquire, improve, enlarge, own, and operate a project. The acquisition of a project by a joint agency under this chapter may include any of the following:

- (1) The purchase, lease, or condemnation of an existing and completed project.
- (2) The purchase, lease, or condemnation of a project under construction.
- (3) The purchase of a project to be constructed.

The joint agency may enter into any contracts necessary to accomplish the activities described in this section.

(b) A member of a joint agency may acquire an undivided interest as a tenant in common in any project of the joint agency. Before a member unit may acquire an undivided interest in the project, the governing body of the member unit shall determine the present and future needs of the member unit for power and energy based on engineering studies and reports. The member unit may not acquire an undivided interest as a tenant in common in a project in excess of the amount of capacity and energy required to provide for the member unit's projected needs for power and energy for a reasonable period of time, as determined by the governing body and approved by the commission in a proceeding

**C
O
P
Y**



under section 45 of this chapter.

(c) The future power requirements of a member unit shall be evaluated by the governing body in accordance with the following:

(1) The economies and efficiencies to be achieved in constructing or acquiring large scale facilities for the generation and transmission of electric power and energy.

(2) The member unit's:

(A) needs for reserve and peaking capacity; and

(B) obligations reasonably related to pooling and reserve sharing agreements to which the member unit is or may become a party.

(3) The estimated useful life of the project.

(4) The estimated time for the planning, development, acquisition, or construction of the project and the member unit's needs for power and energy during that time.

In making the evaluation required under this subsection and in determining whether the member unit should acquire an undivided interest in the project, the governing body shall consult with and consider the recommendations of the directors representing the member unit on the joint agency's board of directors.

(d) If the governing body determines that acquiring an undivided interest in the project will allow the member unit to meet the member unit's present and future needs for power and energy, the governing body may adopt an ordinance authorizing the member unit to acquire an undivided interest in the project. An ordinance under this subsection must include the following:

(1) The purpose or purposes of the project.

(2) The estimated useful life of the project.

(3) The estimated total cost of the project, including the member unit's estimated share of the cost.

(4) Other member units that will acquire an undivided interest in the project, to the extent known by the member unit.

(5) A provision authorizing the member unit's directors on the joint agency's board to execute a contract under subsection (e) to establish the respective rights, duties, and ownership interests of the participating units with respect to the project.

(e) The directors representing each member unit that adopts an ordinance under subsection (d) shall execute a contract to establish the respective rights, duties, and ownership interests of the participating units with respect to the project. The contract must include the following:

C
o
p
y



- (1) The purpose or purposes of the project.
- (2) The estimated useful life of the project.
- (3) The participating units that will acquire an undivided interest in the project.
- (4) The method of financing the project, including the apportionment of costs and revenues among participating units.
- (5) Provisions specifying the participating units' ownership interests in property used or useful in connection with the project, including the procedures for the disposition of property when the project, for any reason, is abandoned, decommissioned, or dismantled.
- (6) Provisions concerning the alienation of and prohibiting the partitioning of a participating unit's undivided interest in the project. The provisions described in this subdivision are not subject to any law restricting covenants against alienation or partition.
- (7) Provisions for the construction of the project, which may include a provision designating one (1) or more participating units to construct the project as the agent for all participating units.
- (8) Provisions for the operation and maintenance of the project, which may include a provision designating one (1) or more participating units to operate and maintain the project as the agent for all participating units.
- (9) Provisions granting the joint agency's board of directors the authority to supervise the construction and operation of the project under terms consistent with this chapter.
- (10) Provisions specifying that if a participating unit defaults in the performance or discharge of the participating unit's obligations with respect to the project, the other participating units may assume, pro rata or otherwise, the obligations of the defaulting participating unit and may succeed to the rights and interests of the defaulting participating unit as may be agreed upon in the contract.
- (11) Methods for amending the contract.
- (12) Methods for terminating the contract.
- (13) Any other necessary or proper matter.

A contract under this section may allow a member unit that will not acquire an undivided interest in the project to purchase electric power or energy derived from the project, in accordance with a contract executed by the member unit and the joint agency under

**C
o
p
y**



section 19 of this chapter.

Sec. 21. (a) Except as provided in subsection (b), each participating unit owns an undivided interest in a project in proportion to:

(1) the amount of money furnished; or

(2) the value of property or other consideration supplied;

by the participating unit for the planning, development, acquisition, or construction of the project. Except as provided in subsection (b), each participating unit is entitled to a percentage share of the project's net output and capacity equal to the percentage share of the participating unit's undivided interest in the project.

(b) A participating unit, with the consent of the other participating units, may:

(1) contribute money, property, or other consideration for a project; or

(2) receive a share of a project's net output and capacity; in a proportion that differs from the participating unit's undivided interest in the project.

(c) The money furnished for a project by a participating unit may be derived only from the following sources:

(1) The proceeds of bonds issued under section 36 of this chapter by the participating unit.

(2) The proceeds of the ownership and operation of the participating unit's municipally owned electric utility, if the participating unit is a municipality that owns or operates an electric utility under IC 8-1.5.

(3) A combination of the proceeds described in subdivisions (1) and (2).

In addition to contributing money from the sources described in this subsection, a participating unit may provide real or personal property, services, and other consideration to finance the participating unit's share of the cost of the project.

(d) A participating unit that owns or operates an electric utility under IC 8-1.5 may do any of the following if the participating unit's governing body determines that the participating unit's ratepayers will not be adversely affected:

(1) Contribute any of the facilities or assets of the participating unit's electric utility to finance the participating unit's share of the cost of the project.

(2) Advance or contribute funds to the joint agency for use by the joint agency in connection with the project, if both of the

C
o
p
y



following apply:

(A) The funds contributed or advanced are derived solely from the ownership or operation of the participating unit's electric utility.

(B) The joint agency will repay, with interest, the funds contributed or advanced, under terms and conditions agreed to by the participating unit and the joint agency. The joint agency shall repay the funds contributed or advanced from the proceeds of the joint agency's bonds, or from any other funds of the joint agency that may be legally used for the repayments.

(e) Except as otherwise provided in this chapter or as otherwise agreed to by the participating units, the money or property or other consideration supplied by a participating unit may not be credited or applied to the interest of any other participating unit. A participating unit's undivided interest in a project:

(1) may not be charged directly or indirectly with a debt or an obligation of any other participating unit; and

(2) is not subject to any lien as a result of a debt or an obligation of any other participating unit.

(f) A participating unit is severally liable for the participating unit's own acts in connection with the project if the acts:

(1) are performed in the participating unit's own name and only with respect to the participating unit's undivided interest in the project; or

(2) are unauthorized by the board.

A participating unit is not jointly or severally liable for the acts, omissions, or obligations of other participating units or the joint agency.

Sec. 22. (a) For the purpose of paying its respective share of the cost of a project, a participating unit may issue bonds of the participating unit as provided in section 36 of this chapter. The participating unit may pledge any of the following to the payment of the principal, premium, if any, and interest on the bonds:

(1) The revenues, or any part of the revenues, derived from the ownership and operation of the participating unit's municipally owned electric utility, if the participating unit is a municipality that owns or operates an electric utility under IC 8-1.5.

(2) The participating unit's:

(A) interest in any project of the joint agency, as determined under section 21 of this chapter, including the

C
o
p
y



participating unit's interest in the project to be financed by the issuance of bonds under this section; or

(B) interest in any joint project, as determined under section 32 of this chapter.

(3) A combination of subdivisions (1) and (2).

Bonds issued under this chapter must be authorized and issued by the governing body of the participating unit.

(b) Upon the request of the issuing participating unit, the commission shall approve at one (1) time the issuance of sufficient bonds, which may be of an indeterminate amount, to finance the participating unit's share of the cost of a project even though:

(1) the bonds are to be issued in series from time to time; and

(2) the exact costs of the project have not been finally determined.

Sec. 23. Except as otherwise provided in this chapter, in acquiring a project under section 20(a) of this chapter, a joint agency has the power of eminent domain to the extent and in the same manner and under the same laws as municipalities or public utilities under IC 32-24-1 or IC 8-1-8. Notwithstanding the application of IC 8-1-2-95.1 to any of its member units, and subject to section 24(d) of this chapter, a joint agency:

(1) acting in its own name; and

(2) exercising the power of eminent domain for a purpose authorized by this chapter;

may condemn an existing facility used for the generation, transmission, or distribution of electric power and energy.

Sec. 24. (a) This section applies to a joint agency that seeks to own, lease, acquire, construct, or operate an electric utility to provide retail electric service to ratepayers in one (1) or more participating units in which one (1) or more public utilities are engaged providing retail electric service. A certificate of public convenience and necessity is not required as a condition precedent to the joint agency's ownership or operation of the planned electric utility if the commission approves:

(1) the acquisition or construction of the proposed electric utility under section 45 of this chapter; and

(2) a service area for the proposed electric utility under IC 8-1-2.3-7.

After conducting the hearing required under subsection (b), the joint agency's board may declare, by a resolution adopted under subsection (c), that public convenience and necessity require the joint agency's ownership or operation of an electric utility to

C
O
P
Y



1 provide retail electric service to ratepayers in participating units,
 2 including ratepayers in participating units in which one (1) or
 3 more public utilities are engaged in providing retail electric
 4 service.

5 (b) Before adopting a resolution under subsection (c), the board
 6 must hold a hearing on the proposed resolution. The board shall
 7 give at least ten (10) days notice of the time and place of the
 8 hearing to each public utility providing retail electric service in:

9 (1) one (1) or more of the participating units; or

10 (2) an area contiguous to one (1) or more of the participating
 11 units.

12 The board shall serve the notice by delivering a copy of the notice
 13 to an officer or a manager of the public utility in each of the
 14 participating units, if possible, or to an officer of the public utility
 15 elsewhere in Indiana. At the hearing, the public utility is entitled to
 16 be heard, in person or by counsel, in opposition to joint agency's
 17 proposed action.

18 (c) After the hearing under subsection (b), the board may adopt
 19 the resolution, either as originally proposed or as modified. Not
 20 later than thirty (30) days after the adoption of a resolution under
 21 this section, a public utility described in subsection (b) may bring
 22 a civil action against the joint agency to secure a judicial review
 23 and determination of the question of public convenience and
 24 necessity. An action under this subsection shall be brought in the
 25 circuit or superior court of the county containing the greatest
 26 number of ratepayers to be served by the joint agency's proposed
 27 electric utility. Pending the court's determination of the cause, the
 28 joint agency may not take any further action to acquire or operate
 29 the proposed electric utility. The cause shall be heard by the court
 30 without delay and without a jury, and each party is entitled to
 31 introduce evidence at the hearing. The court's determination may
 32 be appealed to the court of appeals for errors of law under the
 33 same terms and conditions as govern appeals in ordinary civil
 34 actions.

35 (d) If an action is not filed within the time prescribed by
 36 subsection (c), or if the joint agency's determination of public
 37 convenience and necessity is upheld after the final determination
 38 of an action or appeal under subsection (c), the joint agency shall
 39 proceed to obtain the commission's approval of the proposed
 40 service area for the joint agency's electric utility in accordance
 41 with IC 8-1-2.3-7. After a service area for the joint agency's
 42 electric utility is established by the commission under IC 8-1-2.3-7,

**C
o
p
y**



the joint agency shall proceed to acquire any property of the public utility necessary for the joint agency's ownership or operation of the proposed electric utility. Notwithstanding any provision of IC 8-1-8 or IC 32-24-1, the joint agency shall pay to the public utility an amount equal to at least the sum of:

(1) the value of all the electric utility property of the public utility that is devoted to furnishing retail electric service in the joint agency's approved service area under IC 8-1-2.3-7, at the property's then reproduction cost new depreciated value; plus

(2) any severance damages that are:

(A) determined under the procedures set forth in IC 8-1-2.3-6(1) for a case involving a municipally owned electric utility's annexation of territory that includes the service area of an incumbent electricity supplier;

(B) agreed to by the joint agency and the public utility; and

(C) approved by the commission.

(e) If the joint agency and the public utility are unable to agree on a price for the property of the public utility under subsection (d), the joint agency may do the following:

(1) Declare, in a resolution adopted by the board, that a public necessity exists for the condemnation of the public utility's property. A resolution adopted under this subdivision is final.

(2) Bring an action for the condemnation of the property. An action under this subdivision shall be brought in the circuit or superior court of the county containing the greatest number of ratepayers to be served by the joint agency's proposed electric utility.

(f) Subject to IC 8-1-2-86, in exercising the power of eminent domain in accordance with this chapter, a joint agency may acquire property rights inside or outside the corporate boundaries of any participating unit as necessary for the business of the joint agency's electric utility.

(g) The board may provide for utility lines to be laid through any participating unit as necessary for the ownership or operation of the joint agency's electric utility. The joint agency may use any property or property rights as necessary to:

(1) construct, acquire, or operate the joint agency's electric utility; or

(2) protect the joint agency's electric utility from injury.

Sec. 25. (a) This section applies to a joint agency that acquires a project under section 20(a) of this chapter to provide retail

C
o
p
y



electric service to ratepayers in one (1) or more participating units.

(b) The joint agency may proceed to operate an electric utility that provides retail electric service to ratepayers in one (1) or more of the participating units after the following conditions are met:

(1) The joint agency receives or is issued any licenses, permits, certificates, or approvals required for the operation of the joint agency's proposed electric utility.

(2) The commission approves the service area of the joint agency's proposed electric utility under IC 8-1-2.3-7.

(3) The joint agency acquires, in accordance with the procedures set forth in section 24 of this chapter, any property necessary for the joint agency to own or operate the joint agency's proposed electric utility.

The electric utility may also be operated to provide retail electric service to one (1) or more of the participating units themselves.

(c) The board has general supervisory powers over the joint agency's electric utility. Responsibility for the detailed supervision of the utility is vested in a superintendent, who is responsible to the board for the business and technical operation of the utility. The board shall do the following:

(1) Fix the number and compensation of employees of the utility.

(2) Adopt rules governing the appointment of employees, including making proper classifications and rules to:

(A) determine the eligibility of applicants;

(B) determine by competitive examination the relative fitness of applicants for positions;

(C) establish lists of eligible applicants, arranged according to the ratings secured by the applicants;

(D) provide for the appointment of the applicants having the highest ratings; and

(E) provide for the promotion of employees.

(3) Appoint a superintendent who is responsible to the board for the business and technical operation of the utility. The board shall make the appointment under this subdivision based on the appointed person's fitness to manage the utility, after the board considers the person's executive ability and knowledge of the utility industry.

(4) Hire attorneys when required for the operation of the utility.

(5) Hire professional or expert personnel when required for the operation of the utility.

**C
O
P
Y**



(6) Prepare a budget of the utility's financial needs for the next fiscal year in the detail and at the time required under the joint agency's bylaws. The governing body of each participating unit must approve the proposed budget for the ensuing fiscal year before the budget may take effect.

(7) Establish reasonable and just rates and charges for retail electric service provided to the ratepayers of the participating units in accordance with section 27 of this chapter.

(8) Appropriate, lease, rent, purchase, and hold all real and personal property of the utility.

(9) Enter upon lands for the purpose of surveying or examining the land to determine the location of any plant or appurtenances.

(10) Enter into contracts for any of the following:

(A) The purchase of capital equipment.

(B) The construction of capital improvements.

(C) Other purposes that are necessary for the full and efficient construction, management, and operation of the utility.

(11) Adopt rules for the safe, economical, and efficient management and protection of the utility.

(12) Prepare an annual report of the condition of the utility. The report prepared under this subdivision shall be distributed to the governing body of each participating unit. A report under this subdivision may be combined with the report required under section 50 of this chapter.

(d) The board may enter into a contract to purchase electric power or energy, or a related commodity or service, to enable the joint agency to furnish the electric power or energy, or the related commodity or service, to ratepayers of the participating units or to the participating units themselves. The board may enter into a contract under this subsection with any supplier that is authorized to provide electric power or energy, or a related commodity or service, in a wholesale transaction. Subject to the approval of the commission, an authorized supplier under this subsection may include a member unit that:

(1) owns or operates an electric utility under IC 8-1.5; and

(2) does not contribute the electric utility's facilities or assets to the joint agency, or allow the use of the electric utility's facilities or assets by the joint agency, in accordance with section 16(c) of this chapter;

regardless of whether the member unit has an undivided interest

**C
o
p
y**



in the project under section 21 of this chapter. However, a member unit may sell electric power or energy under this subsection only if and to the extent that the power or energy to be sold exceeds the current needs of the member unit's ratepayers for electric power and energy, or cannot be economically utilized immediately.

(e) If:

(1) the board seeks to purchase electric power or energy, or a related commodity or service, under subsection (d) from a public utility; and

(2) the board and the public utility cannot agree on a rate or charge to be paid for the electric power or energy, or the related commodity or service;

the board or the public utility may apply to the commission or other appropriate state or federal regulatory agency to establish a fair and reasonable rate or charge to be paid for the electric power or energy, or the related commodity or service.

(f) The treasurer of the joint agency shall collect all money derived from the operation of the joint agency's electric utility. The treasurer shall deposit and keep the money collected under this subsection in a separate fund apart from the other funds of the joint agency.

Sec. 26. (a) The superintendent of the joint agency's electric utility shall do the following:

(1) Appoint and supervise and, as necessary, dismiss employees of the utility.

(2) Employ unskilled labor when needed, without competitive examination.

(3) Investigate any claims against the utility.

(4) Oversee the operation of the utility and any construction work, repairs, or alterations to the system.

(5) Advise the board in matters that will bring about the efficient and economical operation and maintenance of the utility.

(b) The superintendent is entitled to compensation for the superintendent's services, as determined by resolution of the board. The superintendent may be required to give bond, in an amount determined by the board, for the faithful performance of the superintendent's duties. The superintendent may be removed by the board for cause at any time after notice and a hearing.

Sec. 27. (a) A joint agency that owns and operates an electric utility shall furnish reasonably adequate services and facilities.

(b) The board shall establish by resolution the rates and charges

C
o
p
y



for retail electric service, and related commodities or services, provided to ratepayers in the participating units. The rates and charges established must be nondiscriminatory, reasonable, and just.

(c) For purposes of this section, "reasonable and just rates and charges for services" means rates and charges that produce sufficient revenue to do the following:

(1) Pay all legal and other expenses necessary for the operation of the utility, including:

(A) maintenance costs;

(B) operating charges;

(C) upkeep;

(D) repairs;

(E) depreciation; and

(F) interest charges on bonds or other obligations, including leases.

(2) Provide a sinking fund for the liquidation of bonds or other obligations, including leases.

(3) Provide a debt service reserve for bonds or other obligations, including leases, in an amount established by the board. The amount established may not exceed the maximum annual debt service on the bonds or obligations or the maximum annual lease rentals.

(4) Provide adequate money for working capital.

(5) To the extent not provided for through depreciation in subdivision (1), provide adequate money for making extensions to and replacements of the system.

(6) Provide money for the payment of any taxes that may be assessed against the utility.

(d) The rates and charges must produce an income sufficient to maintain the utility property in a sound physical and financial condition, so as to enable the joint utility to provide adequate and efficient services. Rates and charges too low to meet the requirements of this subsection are unlawful.

(e) The rates and charges for services provided to ratepayers in one (1) participating unit may not differ from the rates and charges for services provided to the ratepayers in any other participating unit, unless the board clearly demonstrates, in a resolution adopted by the board, that significant cost factors exist that make different charges nondiscriminatory, reasonable, and just.

(f) The board may establish rates and charges sufficient to include a reasonable return on the joint agency's utility plant.

C
O
P
Y



(g) Rates and charges established under this section are subject to the approval of the commission in accordance with the procedures set forth in IC 8-1-2. The commission shall approve rates and charges that are sufficient to:

- (1) satisfy the cash revenue requirements set forth in subsection (c); and
- (2) include a reasonable return on the joint agency's utility plant, if the board acts under subsection (f) in establishing the proposed rates.

(h) The commission shall approve rates and charges sufficient to compensate the joint agency for taxes that any participating unit would be entitled to collect on the joint agency's utility property if the utility property were privately owned. The rates and charges instead of taxes allowed under this section may be:

- (1) transferred to the participating units that would be entitled to collect the taxes if the utility property were privately owned; or
- (2) deposited in a separate account of the joint agency and used for any of the purposes for which the joint agency was created, as set forth in the joint agreement executed under section 16(f) of this chapter;

as agreed to by the participating units in the contract executed under section 20(e) of this chapter.

(i) The commission shall grant any request by the board that an increase in rates and charges not take effect until after the occurrence of a future event.

Sec. 28. (a) This section applies whenever a joint agency has capacity or output that:

- (1) is derived from the joint agency's:
 - (A) electric utility; or
 - (B) undivided interest in a joint project, as determined under section 32 of this chapter; and
- (2) exceeds the current needs of ratepayers for electric power and energy, or cannot be economically used immediately.

(b) As used in this section, "eligible purchaser" means any of the following:

- (1) A municipality that owns or operates an electric utility under IC 8-1.5, including a municipality that:
 - (A) is a member unit; and
 - (B) has not otherwise entered into a contract to purchase power and energy from the joint agency under section 19 of this chapter.

**C
o
p
y**



(2) A joint agency created under this chapter or under IC 8-1-2.2.

(3) A public utility.

(c) As used in this section, "ratepayer" refers to:

(1) a ratepayer in a participating unit, in the case of a sale of excess capacity or output derived from a joint agency's electric utility; or

(2) a ratepayer in a member unit, in the case of a sale of excess capacity or output derived from a joint agency's undivided interest in a joint project.

(d) Subject to subsections (e) and (f), a joint agency may sell the joint agency's excess capacity or output to an eligible purchaser if the joint agency and the eligible purchaser enter into an agreement that:

(1) is filed with and approved by the commission; and

(2) specifies the terms and conditions of sales under this section.

(e) A joint agency's sale of excess capacity or output to a public utility may not be made:

(1) in an amount;

(2) for a time; or

(3) under any condition;

that causes the interest on bonds issued to finance the cost of a project or joint project of the joint agency to become taxable by the federal government.

(f) A joint agency that sells excess capacity or output under this section may use the proceeds of the sale for the following purposes only:

(1) To increase or promote energy conservation among ratepayers.

(2) To provide any energy management, sustainable energy, or energy efficiency product or service to ratepayers.

(3) In the case of a sale of excess capacity or output derived from a joint agency's electric utility, to reduce the rates and charges established under section 27 of this chapter for ratepayers. Notwithstanding section 27 of this chapter, the joint agency may reduce rates and charges under this subdivision without:

(A) the adoption of a resolution by the board; and

(B) the approval of the commission.

Sec. 29. (a) Two (2) or more of any of the following entities may act jointly to plan, finance, develop, construct, reconstruct,

C
o
p
y



1 acquire, improve, enlarge, own, and operate a joint project:

2 (1) An eligible unit, whether or not the eligible unit is a
3 member of a joint agency created under this chapter.

4 (2) A joint agency created under this chapter.

5 (3) A public utility.

6 A participating entity in a joint project shall maintain, as a tenant
7 in common, an undivided interest in the project, as determined
8 under section 32 of this chapter.

9 (b) The acquisition of a joint project under this section may
10 include any of the following:

11 (1) The purchase or lease of an existing and completed
12 project.

13 (2) The purchase or lease of a project under construction.

14 (3) The purchase of a project to be constructed.

15 (c) The participating entities may enter into contracts
16 concerning:

17 (1) any of the activities described in subsection (a); or

18 (2) the ownership interest of a participating entity.

19 Sec. 30. (a) As used in this section, "eligible entity" means any
20 of the following:

21 (1) An eligible unit that seeks to independently participate in
22 a joint project, regardless of whether the eligible unit is a
23 member of a joint agency.

24 (2) A joint agency that seeks to participate in a joint project.

25 (b) As used in this section, "ratepayer" refers to:

26 (1) a ratepayer in the eligible unit, in the case of an eligible
27 entity described in subsection (a)(1); or

28 (2) a ratepayer in any member unit of the joint agency, in the
29 case of an eligible entity described in subsection (a)(2).

30 (c) Before an eligible entity may acquire an undivided interest
31 in a joint project, the governing body of the eligible entity shall
32 determine the present and future needs of ratepayers for power
33 and energy based on engineering studies and reports. The eligible
34 entity may not acquire an undivided interest as a tenant in
35 common in a joint project that exceeds the amount of capacity and
36 energy required to provide for the ratepayers' projected needs for
37 power and energy for a reasonable time, as determined by the
38 governing body and approved by the commission in a proceeding
39 under section 45 of this chapter.

40 (d) The future power requirements of an eligible entity shall be
41 evaluated by the governing body in accordance with the following:

42 (1) The economies and efficiencies to be achieved in

C
o
p
y



constructing or acquiring large scale facilities for the generation and transmission of electric power and energy.

(2) The eligible entity's:

(A) needs for reserve and peaking capacity; and

(B) obligations reasonably related to pooling and reserve sharing agreements to which the eligible entity is or may become a party.

(3) The estimated useful life of the joint project.

(4) The estimated time for the planning, development, acquisition, or construction of the joint project and the eligible entity's needs for power and energy during that time.

(e) If the governing body determines that acquiring an undivided interest in the joint project will allow the eligible entity to meet ratepayers' present and future needs for power and energy, the governing body may adopt an ordinance or a resolution authorizing the eligible entity to acquire an undivided interest in the joint project. An ordinance or a resolution under this subsection must include the following:

(1) The purpose or purposes of the joint project.

(2) The estimated useful life of the joint project.

(3) The estimated total cost of the joint project, including the eligible entity's estimated share of the cost.

(4) Other participating entities that will acquire an undivided interest in the project, to the extent known by the governing body.

(5) A provision authorizing the governing body to execute a contract under section 31 of this chapter to establish the respective rights, duties, and ownership interests of the participating entities with respect to the project.

Sec 31. The participating entities in a joint project shall execute a contract to establish the respective rights, duties, and ownership interests of the participating entities with respect to the project. The contract must include the following:

(1) The purpose or purposes of the joint project.

(2) The estimated useful life of the joint project.

(3) The participating entities that will acquire an undivided interest in the joint project.

(4) The method of financing the joint project, including the apportionment of costs and revenues among participating entities.

(5) Provisions specifying the participating entities' ownership interests in property used or useful in connection with the

C
o
p
y



joint project, including the procedures for the disposition of property when the joint project, for any reason, is abandoned, decommissioned, or dismantled.

(6) Provisions concerning the alienation of and prohibiting the partitioning of a participating entity's undivided interest in the joint project. The provisions described in this subdivision are not subject to any law restricting covenants against alienation or partition.

(7) Provisions for the construction of the joint project, which may include a provision designating one (1) or more participating entities to construct the joint project as the agent for all participating entities.

(8) Provisions for the operation and maintenance of the joint project, which may include a provision designating one (1) or more participating entities to operate and maintain the joint project as the agent for all participating entities.

(9) Provisions for the creation of a committee of representatives of the participating entities. A provision creating a committee under this subdivision may grant the committee the authority to supervise the construction and operation of the joint project under terms consistent with this chapter.

(10) Provisions specifying that if a participating entity defaults in the performance or discharge of the participating entity's obligations with respect to the joint project, the other participating entities may assume, pro rata or otherwise, the obligations of the defaulting participating entity and may succeed to the rights and interests of the defaulting participating entity as may be agreed upon in the contract.

(11) Methods for amending the contract.

(12) Methods for terminating the contract.

(13) Any other necessary or proper matter.

Sec. 32. (a) Except as provided in subsection (b), each participating entity owns an undivided interest in a joint project in proportion to:

(1) the amount of money furnished; or

(2) the value of property or other consideration supplied;

by the participating entity for the planning, development, acquisition, or construction of the joint project. Each participating entity is entitled to a percentage share of the joint project's net output and capacity equal to the percentage share of the participating entity's undivided interest in the joint project.

**C
o
p
y**



(b) A participating entity, with the consent of the other participating entities, may:

- (1) contribute money, property, or other consideration for the joint project; or
- (2) receive a share of the joint project's net output and capacity;

in a proportion that differs from the participating entity's undivided interest in the joint project.

(c) This subsection applies to a participating entity described in section 30(a) of this chapter. The money furnished for a joint project by a participating entity may be derived only from the following sources:

- (1) The proceeds of bonds issued under section 36 of this chapter by the participating entity.
- (2) The proceeds of the ownership and operation of either of the following:

(A) The participating entity's municipally owned electric utility, in the case of a participating entity that:

- (i) is described in section 30(a)(1) of this chapter; and
- (ii) is a municipality that owns or operates an electric utility under IC 8-1.5.

(B) An electric utility owned and operated by the participating entity under this chapter, in the case of a participating entity described in section 30(a)(2) of this chapter.

- (3) A combination of the proceeds described in subdivisions (1) and (2).

In addition to contributing money from the sources described in this subsection, a participating entity may provide real or personal property, services, and other consideration to finance the participating entity's share of the cost of the project.

(d) Except as otherwise provided in this chapter or as otherwise agreed to by the participating entities, the money or property or other consideration supplied by a participating entity may not be credited or applied to the interest of any other participating entity. A participating entity's undivided interest in a joint project:

- (1) may not be charged directly or indirectly with a debt or an obligation of any other participating entity; and
- (2) is not subject to any lien as a result of a debt or an obligation of any other participating entity.

(e) A participating entity is severally liable for the participating entity's own acts in connection with a joint project and may not be

C
o
p
y



held jointly or severally liable for the acts, omissions, or obligations of others. However, a participating entity may be severally liable for acts performed by any project manager, construction agent, or operating agent for a joint project.

Sec. 33. (a) This section applies to a participating entity described in section 30(a) of this chapter.

(b) For the purpose of paying its respective share of the cost of a joint project, a participating entity may issue bonds of the participating entity as provided in this chapter. A participating entity may pledge any of the following to the payment of the principal, premium, if any, and interest on the bonds:

(1) The revenues, or any part of the revenues, derived from the ownership and operation of any of the following:

(A) The participating entity's municipally owned electric utility, in the case of a participating entity that:

- (i) is described in section 30(a)(1) of this chapter; and
- (ii) is a municipality that owns or operates an electric utility under IC 8-1.5.

(B) An electric utility owned and operated by the participating entity under this chapter, in the case of a participating entity described in section 30(a)(2) of this chapter.

(2) The participating entity's:

(A) interest in any joint project, as determined under section 32 of this chapter, including the participating entity's interest in the joint project to be financed by the issuance of bonds under this section; or

(B) interest in the project of a joint agency, as determined under section 21 of this chapter.

(3) A combination of subdivisions (1) and (2).

Bonds issued under this chapter must be authorized and issued by the governing body of the participating entity.

(c) Upon the request of the issuing participating entity, the commission shall approve at one (1) time the issuance of sufficient bonds, which may be of an indeterminate amount, to finance the issuer's share of the cost of a joint project even though:

- (1) the bonds are to be issued in series from time to time; and
- (2) the exact costs of the joint project have not been finally determined.

Sec. 34. This section applies whenever:

- (1) an eligible unit described in section 30(a)(1) of this chapter; and

C
o
p
y



(2) a joint agency;
are participating entities in a joint project. The eligible unit and the joint agency may jointly or separately apply to any agency of the state or federal government for any license, permit, certificate, or approval required in connection with the joint project.

Sec. 35. A participating entity described in section 30(a) of this chapter may enter into a contract with any other participating entity for the exchange, interchange, wheeling, pooling, and transmission of electric power and energy produced by the joint project.

Sec. 36. (a) An eligible unit or a joint agency may issue at one (1) time, or from time to time, bonds of the eligible unit or joint agency to pay all or any part of the cost of any of the purposes authorized by this chapter, including the following:

(1) The funding or refunding of the principal, interest, or other obligation on any bonds issued by the eligible unit or joint agency, whether or not the bonds to be funded or refunded have become due.

(2) The establishment or increase of reserves to secure or to pay the bonds.

(3) The provision of working capital.

(4) The payment of all other costs or expenses incident to and necessary or convenient to carry out the purposes and powers authorized by this chapter.

The principal, premium, if any, and the interest on the bonds are payable solely from the revenues and other available funds of the issuer pledged or specified for the payment of bonds in accordance with this chapter. The bonds of each issue bear interest at a rate or rates determined by the issuer and are not subject to any other Indiana law limiting interest rates. The bonds of each issue shall be dated and shall mature in amounts and at a time or times, not exceeding fifty (50) years from the bonds' respective date or dates, as may be determined by the governing body of the issuer. The bonds of each issue may be made redeemable before maturity at a price or prices, and under terms and conditions, as fixed by the governing body of the issuer before the issuance of the bonds. The governing body of the issuer shall determine the form and manner of execution of the bonds, including any interest coupons to be attached, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company in or outside Indiana, but at least one (1) place of payment must be in Indiana. If an

C
o
p
y



officer whose signature, or a facsimile of whose signature, appears on any bonds or coupons ceases to hold that office before the delivery of the officer's bond, the signature or facsimile is valid and sufficient for all purposes as if the officer had remained in office until delivery. The governing body of the issuer may also provide for the authentication of the bonds by a trustee or fiscal agent. The bonds may be issued in coupon or in fully registered form, or both, as the governing body of the issuer may determine. Provisions may be made for the registration of any coupon bonds as to principal alone or as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds. For bonds issued by a joint agency, the bonds of each issue shall be sold by either public or negotiated sale at a price determined by the joint agency.

(b) The proceeds of the bonds of each issue shall be used solely for the purposes for which the bonds are issued, and shall be disbursed in the manner and under the restrictions, if any, as the governing body of the issuer may provide in the resolution authorizing the issuance of the bonds or in a trust agreement securing the bonds. The eligible unit or joint agency may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when definitive bonds are executed and available for delivery. The eligible unit or joint agency may also provide for replacement of bonds that are mutilated, destroyed, or lost.

(c) Except as provided in section 45 of this chapter, bonds may be issued under this chapter without the need for the governing body of the issuer to obtain the consent of the state or of any political subdivision, or of any agency, commission, or instrumentality of the state or a political subdivision, and without any other approvals, proceedings, or the happening of any conditions or things other than the approvals, proceedings, or conditions or things specifically required by this chapter or by provisions of the resolution authorizing the issuance of the bonds or the trust agreement securing the bonds.

Sec. 37. In the discretion of the governing body of the issuer, bonds issued under this chapter may be secured by a trust agreement by and between the issuer and a corporate trustee, which may be any trust company or bank having the powers of a trust company in or outside Indiana. The trust agreement, or the resolution providing for the issuance of bonds, may contain

C
O
P
Y



provisions for protecting and enforcing the rights and remedies of the bondholders and of the trustee, as is reasonable and proper and not in violation of law, and may restrict the individual right of action by bondholders. The trust agreement or the resolution providing for the issuance of bonds may contain covenants, including covenants concerning any of the following:

(1) The pledge of all or any part of the revenues derived or to be derived from any of the following:

(A) The project or joint project to be financed by the bonds.

(B) The ownership and operation of the issuer's municipally owned electric utility, if the issuer is an eligible unit that owns or operates an electric utility under IC 8-1.5.

(C) The ownership and operation of the issuer's electric utility, if the issuer is a joint agency that owns or operates an electric utility under this chapter.

(2) The rents, rates, fees, and charges to be established, maintained, and collected by the eligible unit or joint agency and the use and disposal of revenues, gifts, grants, and funds received or to be received by the eligible unit or joint agency.

(3) The setting aside of reserves and the investment, regulation, and disposition of reserves.

(4) The custody, collection, securing, investment, and payment of any money held for the payment of bonds.

(5) Limitations or restrictions on the purposes to which the proceeds of the sale of bonds issued or to be issued may be applied.

(6) Limitations or restrictions on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, or the refunding of outstanding or other bonds.

(7) The procedure, if any, by which the terms of any contract with bondholders may be amended, the percentage of bonds the bondholders of which must consent to an amendment, and the manner in which consent may be given.

(8) Events of default and the rights and liabilities arising upon default. Covenants under this subdivision may include the terms and conditions upon which bonds issued under this chapter become or may be declared due before maturity, and the terms and conditions upon which the declaration and consequences of the declaration may be waived.

(9) The preparation and maintenance of a budget for the

C
o
p
y



project or joint project.

(10) The retention or employment of consulting engineers, independent auditors, and other technical consultants.

(11) Limitations on, or the prohibition of, the provision of free service, derived from the project or joint project, to any person, firm, limited liability company, or corporation, whether public or private.

(12) The acquisition and disposal of property. However, a project or a joint project, or any part of a project or joint project, may not be mortgaged by the trust agreement or resolution.

(13) Provisions for insurance and for accounting reports, including provisions for the inspection and audit of accounting reports.

(14) The continuing operation and maintenance of the project or joint project.

Sec. 38. (a) An eligible unit or a joint agency may fix, charge, and collect rents, rates, fees, and charges for electric power and energy and other services, facilities, and commodities sold, furnished, or supplied through any of the following:

(1) Subject to IC 8-1.5-3-8, the facilities of the eligible unit's municipally owned electric utility, in the case of an eligible unit that owns or operates an electric utility under IC 8-1.5.

(2) Subject to section 27 of this chapter, the joint agency's electric utility, in the case of a joint agency that owns or operates an electric utility under this chapter.

(3) The eligible unit's or the joint agency's interest in any project or joint project.

(b) For as long as any bonds of an eligible unit or a joint agency issued under this chapter are outstanding and unpaid, the rents, fees, and charges described in subsection (a) must be fixed so as to provide revenues sufficient to pay the following:

(1) All costs of, and charges and expenses in connection with, the proper operation and maintenance of the eligible unit's or joint agency's electric utility, if the eligible unit or the joint agency owns or operates an electric utility.

(2) All expenses in connection with the interest of the eligible unit or joint agency in any project or joint project.

(3) All costs of, and charges and expenses in connection with, all necessary repairs, replacements, or renewals of the following:

(A) The electric utility of the eligible unit or joint agency,

**C
o
p
y**



1 if the eligible unit or the joint agency owns or operates an
2 electric utility.

3 (B) A project or joint project of the eligible unit or joint
4 agency.

5 (4) When due (whether at maturity, upon acceleration, or by
6 sinking fund requirements), the principal, premium, if any,
7 and interest on all bonds payable from the revenues of:

8 (A) an electric utility; or

9 (B) a project or joint project;

10 described in subdivision (3).

11 (5) Any and all amounts necessary for the creation and
12 maintenance of reserves as may be required by any resolution
13 or trust agreement authorizing and securing bonds.

14 (6) When due (whether at maturity, upon acceleration, or by
15 sinking fund requirements), the principal, premium, if any,
16 and interest on all general obligation bonds issued or to be
17 issued to finance additions and improvements to:

18 (A) an electric utility; or

19 (B) a project or joint project;

20 described in subdivision (3).

21 (7) Any and all amounts that the eligible unit or joint agency
22 may be obligated to pay, by law or contract, from the
23 revenues of:

24 (A) an electric utility; or

25 (B) a project or joint project;

26 described in subdivision (3).

27 (8) Any additional amounts that must be realized by the
28 eligible unit or joint agency in order to meet the requirements
29 of any rate covenant imposed by any resolution or trust
30 agreement authorizing and securing bonds.

31 (c) Any pledge made by an eligible unit or a joint agency under
32 this chapter is valid and binding from the date the pledge is made.
33 The revenues, securities, and other money pledged and then held
34 or later received by the eligible unit or joint agency or any
35 fiduciary are immediately subject to the lien of the pledge without
36 any physical delivery or further act required, and the lien of the
37 pledge is valid and binding against all parties having claims of any
38 kind in tort, contract, or otherwise against the eligible unit or joint
39 agency, regardless of whether the parties have notice of the lien.
40 The resolution or trust agreement or any financing statement,
41 continuation statement, or other instrument by which a pledge is
42 created is not required to be filed or recorded in any manner.

C
o
p
y



1 **Sec. 39. Notwithstanding any law to the contrary, all money**
 2 **received under this chapter, whether as proceeds from the sale of**
 3 **bonds or as revenues, is considered a trust fund to be held and**
 4 **applied solely as provided in this chapter. A resolution authorizing**
 5 **the issuance of bonds, or a trust agreement securing bonds, may**
 6 **provide that any of the money received may be temporarily**
 7 **invested and reinvested, pending disbursements of the money, in**
 8 **securities and other investments, as provided in the resolution or**
 9 **trust agreement. A resolution or trust agreement that provides for**
 10 **the investment and reinvestment of money must also provide that**
 11 **any officer with whom, or any bank or trust company with which,**
 12 **the money is deposited shall act as trustee of the money and shall**
 13 **hold and apply it as directed, subject to this chapter and the terms**
 14 **of the resolution or trust agreement.**

15 **Sec. 40. A holder of bonds issued under this chapter or of any of**
 16 **the bond coupons, and the trustee under any trust agreements,**
 17 **except to the extent that the trustee's rights are restricted by the**
 18 **trust agreement or the resolution authorizing the issuance of the**
 19 **bonds, may do the following:**

20 (1) **Bring a suit, an action, or other proceeding, either at law**
 21 **or in equity, to protect and enforce any and all rights under:**

22 (A) **Indiana law;**

23 (B) **to the extent permitted by law, the trust agreement or**
 24 **resolution authorizing the issuance of the bonds; or**

25 (C) **any agreement or other contract executed by the**
 26 **eligible unit or joint agency under this chapter.**

27 (2) **Enforce and compel the performance of all duties**
 28 **required, by this chapter or by the trust agreement or**
 29 **resolution, to be performed by the eligible unit or joint agency**
 30 **or by any officer of the eligible unit or joint agency, including**
 31 **the fixing, charging, and collecting of rents, rates, fees, and**
 32 **charges.**

33 **Sec. 41. Bonds issued by an eligible unit or a joint agency under**
 34 **this chapter are securities in which all public officers and agencies**
 35 **of the state and all insurance companies, banking associations,**
 36 **investment companies, executors, administrators, trustees, and**
 37 **other fiduciaries may properly and legally invest funds, including**
 38 **capital in their control or belonging to them. The bonds are**
 39 **securities that may properly and legally be deposited with and**
 40 **received by any officer or agency of the state for any purpose for**
 41 **which the deposit of bonds or obligations of the state is or may be**
 42 **authorized by law.**

C
O
P
Y



1 **Sec. 42. The state covenants and agrees with the holders of any**
 2 **bonds that as long as any bonds of an eligible unit or a joint agency**
 3 **issued under this chapter are outstanding and unpaid, the state will**
 4 **not:**

5 **(1) limit or alter the rights of the eligible unit or joint agency**
 6 **to:**

7 **(A) acquire, construct, reconstruct, improve, enlarge,**
 8 **extend, own, operate and maintain:**

9 **(i) the electric utility of the eligible unit or joint agency,**
 10 **if the eligible unit or joint agency owns or operates an**
 11 **electric utility; or**

12 **(ii) any project or joint project, or an interest in any**
 13 **project or joint project;**

14 **(B) establish, maintain, revise, charge, and collect rents,**
 15 **rates, fees, and charges under this chapter; or**

16 **(C) fulfill the terms of any agreements made with the**
 17 **holders of the bonds; or**

18 **(2) in any way impair the rights and remedies of the**
 19 **bondholders;**

20 **until the bonds, together with interest on the bonds, interest on any**
 21 **unpaid installment of interest, and all costs and expenses in**
 22 **connection with any action or proceedings by or on behalf of the**
 23 **bondholders, are fully paid, met, and discharged.**

24 **Sec. 43. (a) Bonds issued under this chapter by an eligible unit**
 25 **are not general obligations of the eligible unit issuing them. The**
 26 **principal, premium, if any, and interest on the bonds are not**
 27 **payable from the general funds of the eligible unit and do not**
 28 **constitute a legal or an equitable pledge, charge, lien, or**
 29 **encumbrance upon any of the eligible unit's property or upon any**
 30 **of the eligible unit's income, receipts, or revenues, except the funds**
 31 **that are pledged under the resolution authorizing the bonds or the**
 32 **trust agreement securing the bonds. Neither the faith and credit**
 33 **nor the taxing power of the eligible unit or of the state are, or may**
 34 **be, pledged for the payment of the principal, premium, if any, or**
 35 **interest on the bonds, and a holder of the bonds does not have the**
 36 **right to compel the exercise of the taxing power of the state or of**
 37 **the eligible unit or the forfeiture of any of the eligible unit's**
 38 **property in connection with any default. Each bond issued under**
 39 **this chapter must contain on the face of the bond a statement that**
 40 **the principal, premium, if any, and interest on the bond are**
 41 **payable solely from the revenues and other funds pledged to the**
 42 **bond's payment and that the eligible unit is not obligated to pay the**

C
O
P
Y



principal, premium, if any, or interest except from the named revenues and other funds.

(b) Bonds issued under this chapter by a joint agency are obligations of the joint agency issuing them. The state, or a political subdivision of the state, other than the joint agency, is not obligated to pay the principal, premium, if any, or interest on the bonds. Neither the faith and credit nor the taxing power of:

- (1) the state;
- (2) a political subdivision of the state; or
- (3) a member unit of the joint agency;

may be pledged to the payment of the principal, premium, if any, or interest on the bonds.

(c) Payments made under a transmission contract under section 18(a)(14) of this chapter must be paid solely from revenues of the joint agency entering into the contract. The obligation to make the payments does not constitute an indebtedness of, or lend the credit of:

- (1) the state;
- (2) a political subdivision of the state; or
- (3) a member unit of the joint agency;

to a public utility.

Sec. 44. Bonds issued under this chapter, including:

- (1) the transfer of bonds; and
- (2) income from bonds, including any profit made on the sale of bonds;

are at all times exempt from taxation by the state or any political subdivision, or by any agency of the state or of any political subdivision, except for inheritance or gift taxes.

Sec. 45. (a) Before the acquisition or the commencement of construction of any project or joint project under this chapter, each:

- (1) participating unit, in the case of a project of a joint agency under section 20 of this chapter; or
 - (2) participating joint agency and participating eligible unit, in the case of a joint project under section 29 of this chapter;
- shall file a verified petition with the commission.

(b) In a petition filed under this section, the eligible unit or joint agency shall request the commission's approval for:

- (1) the project or joint project;
- (2) the participation of the eligible unit or joint agency in the project or joint project; and
- (3) the issuance of any bonds by the eligible unit or joint

C
o
p
y



agency under this chapter.

(c) The commission shall issue an order approving the project or joint project, the participation of the eligible unit or joint agency in the project or joint project, and the issuance of bonds by the eligible unit or the joint agency if the commission makes the following findings:

(1) That the participation of the eligible unit or joint agency in the project or joint project is economically and technically feasible.

(2) That the project or joint project will be integrated with existing or planned transmission line facilities in Indiana in a manner that avoids economic and physical duplication of existing or planned transmission line facilities.

(3) That the eligible unit or the joint agency owns, or has access to, the transmission facilities necessary to transmit power and energy from the project or joint project to ratepayers in the eligible unit or in the participating units or member units of the joint agency.

(4) That for a project or joint project involving a coal consuming facility, the facility uses coal from the geological formation known as the Illinois basin or is justified, because of economic considerations or governmental requirements, in using coal from another source.

(5) That for a project or joint project involving the acquisition or participation in the ownership of an electric generating facility located outside Indiana, the eligible unit or joint agency has been unable to:

(A) acquire or participate in the ownership of a comparable generating facility in Indiana at a comparable cost; and

(B) purchase sufficient amounts of electricity in Indiana at a comparable cost;

giving due consideration to all factors, including the length and terms of available purchases and the expected useful life of the facilities considered.

(6) That for a project or joint project involving the acquisition or participation in the ownership of an electric generating facility located outside Indiana, the acquisition of or participation in the ownership of the facility provides the eligible unit or joint agency with greater economic benefits than:

(A) the acquisition or participation in the ownership of a

C
o
p
y



comparable generating facility in Indiana available for ownership; or

(B) the purchase of sufficient amounts of electricity in Indiana at a comparable cost;

giving due consideration to all factors, including but not limited to the length and terms of available purchases and the expected useful life of the facilities considered.

(7) That the determinations of the governing body of the eligible unit or joint agency under section 20(c) or 30(d) of this chapter should be approved.

Except as provided in section 24(a) of this chapter for a project of a joint agency under section 20 of this chapter, the findings required by this subsection are in addition to the determinations the commission is required to make under IC 8-1-8.5-4 and IC 8-1-8.5-5.

(d) The commission may:

(1) make any inquiry or investigation;

(2) hold any hearings; and

(3) examine any witnesses, books, papers, documents, or contracts;

as the commission considers necessary in determining whether to issue an order under subsection (c).

(e) A joint agency is not a public utility (as defined in IC 8-1-2-1). However, in a proceeding initiated by a joint agency under this section, the commission has jurisdiction to proceed in the same manner and with the same authority with respect to the joint agency's petition as is provided under IC 8-1-2 in the case of a proceeding initiated by a public utility.

Sec. 46. An eligible unit or a joint agency may:

(1) contract with one (1) or more other public or private entities for the planning, acquisition, construction, reconstruction, operation, maintenance, repair, extension, and improvement of generation and transmission facilities in or outside:

(A) the corporate limits of the eligible unit, in the case of an eligible unit; or

(B) the corporate limits of the member units of the joint agency, in the case of a joint agency; and

(2) contract with one (1) or more other public or private entities to perform any of the activities described in subdivision (1) for the other entity;

without advertising for bids or securing performance and payment

C
o
p
y



bonds, except to the extent that the governing body of the eligible unit or joint agency determines that advertising for bids or securing performance and payment bonds is necessary or desirable for a particular contract or project. Except as otherwise provided by this section, a contract under this section is not invalid or unenforceable because of nonperformance of the conditions required by any other law concerning public contracts.

Sec. 47. (a) Any part of a project or joint project owned by an eligible unit or a joint agency is exempt from property taxes. However, each:

(1) eligible unit or joint agency owning all or any part of a joint project; and

(2) joint agency owning a project under section 20 of this chapter;

shall, instead of property taxes, pay to any governmental unit authorized to levy property taxes the amount that would be assessed as taxes on real and personal property of a project or joint project if the project or joint project were otherwise subject to valuation and assessment. Payments instead of taxes under this section are due and bear interest if unpaid, as in the case of taxes on other property. Payments instead of taxes under this section shall be treated in the same manner as taxes for purposes of all procedural and substantive provisions of law.

(b) Except as provided in this section for property owned by an eligible unit as a participant in a joint project, any property that is:

(1) owned by an eligible unit; and

(2) used or useful in the operation of an electric utility owned and operated by the eligible unit under IC 8-1.5;

is not subject to payments instead of taxes.

Sec. 48. (a) When acting within the scope of their authority or in the course of their employment, individuals employed or appointed by an eligible unit or a joint agency to work on a project or joint project have the same authority, rights, privileges, and immunities that officers, agents, and employees of eligible units have.

(b) An officer of an eligible unit or of a joint agency, or a person acting on behalf of the officer, when acting within the scope of the officer's authority under this chapter, is not subject to any personal liability or accountability in carrying out any of the powers expressly or impliedly granted under this chapter.

Sec. 49. Whenever the board of directors of a joint agency and the governing bodies of the member units determine that:

**C
o
p
y**



(1) the purposes for which the joint agency was formed have been substantially fulfilled; and

(2) all bonds issued and all other obligations incurred by the joint agency have been fully paid or satisfied, or provision for the payment of the bonds or obligations has been made in accordance with the terms of the resolution or trust agreement securing the bonds or obligations;

the board of directors and the governing bodies may declare, in a jointly adopted resolution, that the joint agency is dissolved. On the effective date of the resolution, the title to all funds and other property owned by the joint agency at the time of the dissolution vest in the member units as provided in the joint agency's bylaws and in accordance with this chapter.

Sec. 50. (a) Each:

(1) eligible unit or joint agency that has an ownership interest in a joint project; and

(2) joint agency owning a project under section 20 of this chapter;

shall, following the close of each fiscal year, prepare an annual report of the eligible unit's or joint agency's activities with respect to the project or joint project for the preceding year. A report under this section must set forth, on a form prescribed by the commission, a complete operating and financial statement covering the operations of the project or joint project during the year.

(b) A report prepared by an eligible unit or a joint agency described in subsection (a)(1) shall be submitted to:

(1) the commission; and

(2) the governing body of:

(A) the eligible unit, in the case of a report prepared by an eligible unit; or

(B) each member unit and the joint agency, in the case of a report prepared by a joint agency.

(c) A report prepared by a joint agency described in subsection (a)(2) shall be submitted to:

(1) the commission; and

(2) the governing body of:

(A) each participating unit; and

(B) the joint agency.

(d) Each eligible unit or joint agency described in subsection (a) shall cause an audit of the eligible unit's or joint agency's books of record and accounts, relating to the joint project or project, to be made at least once each year by a certified public accountant. The

**C
O
P
Y**



1 cost of the audit under this subsection may be treated as a cost of
 2 construction of the joint project or project, or otherwise as part of
 3 the expenses of the administration of the joint project or project.

4 **Sec. 51. (a)** The governing body of an eligible unit or of a joint
 5 agency is entitled to apply for, enter into contracts for, and accept
 6 grants and loans from the state or the federal government, or from
 7 any agency of the state or of the federal government, for the
 8 following purposes:

9 (1) Planning, acquiring, constructing, expanding, maintaining,
 10 and operating a project or joint project.

11 (2) Participating in a research or development program.

12 (3) Performing any other function that the eligible unit or
 13 joint agency is authorized by law to perform.

14 **(b)** In exercising the authority granted by this section, the
 15 governing body may:

16 (1) enter into and carry out contracts under which the state or
 17 the federal government, or an agency of the state or of the
 18 federal government, grants financial or other assistance to the
 19 eligible unit or joint agency;

20 (2) accept assistance or funds with or without a contract;

21 (3) agree to and comply with any reasonable conditions that
 22 are imposed upon any grants or loans awarded; and

23 (4) make expenditures from any funds received.

24 **Sec. 52.** This chapter provides a complete method for the
 25 performance of any acts authorized under this chapter. The powers
 26 granted to any entity under this chapter are supplemental to and
 27 do not derogate the powers conferred on the entity by any other
 28 law. However, if this chapter is inconsistent with any other general,
 29 special, or local law, the provisions of this chapter are controlling.
 30 This chapter does not authorize the issuance of bonds to finance
 31 facilities to be owned by any private corporation. The issuance of
 32 bonds to finance an interest in any joint project in which a private
 33 corporation is a participating entity shall not be construed to
 34 constitute the issuance of bonds to finance facilities to be owned by
 35 a private corporation.

36 **Sec. 53.** The commission may adopt rules under IC 4-22-2 to
 37 implement this chapter.

38 **SECTION 6.** IC 8-1.5-2-3 IS AMENDED TO READ AS
 39 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. (a) Subject to
 40 restrictions imposed by a bond ordinance, resolution, indenture,
 41 contract under IC 8-1-2.2 or **IC 8-1-8.9**, or similar instrument binding
 42 upon it, a municipality may sell or otherwise dispose of any of its

C
O
P
Y



1 municipally owned utilities under this chapter.

2 (b) A municipality may own, lease, acquire, or construct a utility
3 within the corporate boundaries of the municipality, and within a radius
4 of six (6) miles from those boundaries or any place within the county
5 in which the municipality is located, under this chapter without the
6 consent of any agency other than the municipal legislative body.
7 Waterworks facilities may be leased from a public utility and operated
8 in conjunction with its municipal waterworks, whether or not the leased
9 facilities are located within the corporate boundaries of the
10 municipality, if the area served by the leased facilities outside those
11 boundaries is contiguous to, or within one (1) mile of, those
12 boundaries. For purposes of IC 36-4-3, a municipality that leases and
13 operates waterworks serving such an area is considered to be furnishing
14 water service to the area.

15 SECTION 7. IC 8-1.5-2-6 IS AMENDED TO READ AS
16 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 6. (a) After the hearing
17 required by section 5 of this chapter and before any election that may
18 be required by that section, the municipal legislative body may adopt
19 an ordinance providing for:

- 20 (1) the sale or disposition of the municipally owned utility
21 property;
22 (2) the manner of the sale;
23 (3) the price, terms, and conditions of the sale, which must be
24 consistent with any contractual obligations previously incurred
25 under IC 8-1-2.2 **or IC 8-1-8.9**; and
26 (4) the officer or officers who are to execute the proper
27 documents conveying title on behalf of the municipality.

28 (b) The property may not be sold for less than its full appraised
29 value, as set forth in the appraisal, less the amount of any bonds, liens,
30 or other indebtedness due upon the property, and only in accordance
31 with contractual obligations incurred under IC 8-1-2.2 **or IC 8-1-8.9**.
32 The indebtedness shall either:

- 33 (1) be paid in accordance with the terms and conditions of the
34 instruments governing the indebtedness before the sale; or
35 (2) be assumed and paid by the purchaser as part of the purchase
36 price of the property.

37 (c) This subsection applies if a municipal legislative body adopts an
38 ordinance for the sale or disposition of municipally owned utility real
39 property by acceptance of bids. A bid submitted by a trust (as defined
40 in IC 30-4-1-1(a)) must identify each:

- 41 (1) beneficiary of the trust; and
42 (2) settlor empowered to revoke or modify the trust.

C
o
p
y



(d) The proceeds of any sale under this chapter shall be paid into the treasury of the municipality making the sale and become part of the general fund.

SECTION 8. IC 8-1.5-2-25 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 25. (a) The municipal legislative body, after providing for the:

- (1) payment of operation and maintenance expenses of the utility;
- (2) payment of the interest and principal on revenue bonds and creation of reserves for them;
- (3) payment of the interest and principal on general obligation bonds and creation of reserves for them; and
- (4) payment of assessed taxes;

shall set aside a sufficient remainder of the earnings into a separate and special account to be identified as the special utility account, to be used and applied in the extension, replacement in whole or in part, repair, and operation and maintenance of the utility.

(b) The remaining earnings may be applied to:

- (1) the general fund of the municipality in accordance with IC 8-1.5-3-11, outstanding bond ordinances, and contract provisions under IC 8-1-2.2 **or IC 8-1-8.9**;
- (2) the payment of the interest on a loan made for utility construction; or
- (3) the creation of a sinking fund for the liquidation of the debt;

as the legislative body determines.

SECTION 9. IC 8-1.5-3-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 11. (a) The money belonging to each municipally owned utility shall be kept by the municipal fiscal officer as separate funds as required by any bond ordinance or accounting procedures established by the commission or the state board of accounts. The municipal legislative body, with the approval of the board, may transfer surplus earnings of the utility to the general fund. The money may not, however, be transferred unless the terms and conditions of any bond ordinance, resolution, indenture, contract under IC 8-1-2.2 **or IC 8-1-8.9**, or similar instrument binding upon the utility are complied with.

(b) A cash reserve fund shall be created by ordinance and carried on the records of the utility or utilities by providing for monthly contributions or transfers to the cash reserve fund of surplus earnings of the utility or utilities.

(c) "Surplus earnings" are those cash earnings remaining after provision has been made to take care of current obligations, including:

- (1) operating expense;

C
o
p
y



- (2) depreciation or replacement fund;
- (3) bond and interest sinking fund;
- (4) retirement fund; or
- (5) any other priority fund requirements fixed by law.

(d) After creation of the cash reserve fund, the legislative body may include in the municipal general fund budget, as revenue in lieu of taxes, an amount equal to the actual balance in the cash reserve fund as of June 30 of the current year. However, the available cash reserve fund balance may be transferred to the municipal general fund only during the calendar year for which the budget was adopted, and transfers may not be made from any utility funds to the general fund except from the cash reserve fund.

(e) If at any time after the final approval of the budget an emergency should arise for further appropriations from the general fund, the legislative body may, by ordinance, transfer additional money from the cash reserve fund to the general fund to provide for the additional appropriations, the transfer to be limited to the accretions to the cash reserve fund since the preceding June 30.

(f) A cash reserve fund, if authorized by ordinance, may be used to make loans to another utility owned by the same municipality, for periods not to exceed five (5) years, at any interest rate. The repayment of the loan and interest shall be returned to the cash reserve fund.

SECTION 10. IC 8-9.5-9-2, AS AMENDED BY P.L.273-1999, SECTION 45, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. As used in this chapter, "authority" means:

- (1) an authority or agency established under IC 8-1-2.2, **IC 8-1-8.9**, or IC 8-9.5 through IC 8-23;
- (2) the commission established under IC 4-13.5;
- (3) only in connection with a program established under IC 13-18-13 or IC 13-18-21, the bank established under IC 5-1.5;
- or
- (4) a fund or program established under IC 13-18-13 or IC 13-18-21.

SECTION 11. IC 32-28-3-1, AS AMENDED BY P.L.151-2003, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. (a) A contractor, a subcontractor, a mechanic, a lessor leasing construction and other equipment and tools, whether or not an operator is also provided by the lessor, a journeyman, a laborer, or any other person performing labor or furnishing materials or machinery, including the leasing of equipment or tools, for:

- (1) the erection, alteration, repair, or removal of:
 - (A) a house, mill, manufactory, or other building; or

C
o
p
y



- 1 (B) a bridge, reservoir, system of waterworks, or other
 2 structure;
 3 (2) the construction, alteration, repair, or removal of a walk or
 4 sidewalk located on the land or bordering the land, a stile, a well,
 5 a drain, a drainage ditch, a sewer, or a cistern; or
 6 (3) any other earth moving operation;
 7 may have a lien as set forth in this section.
 8 (b) A person described in subsection (a) may have a lien separately
 9 or jointly upon the:
 10 (1) house, mill, manufactory, or other building, bridge, reservoir,
 11 system of waterworks, or other structure, sidewalk, walk, stile,
 12 well, drain, drainage ditch, sewer, cistern, or earth:
 13 (A) that the person erected, altered, repaired, moved, or
 14 removed; or
 15 (B) for which the person furnished materials or machinery of
 16 any description; and
 17 (2) on the interest of the owner of the lot or parcel of land:
 18 (A) on which the structure or improvement stands; or
 19 (B) with which the structure or improvement is connected;
 20 to the extent of the value of any labor done or the material furnished,
 21 or both, including any use of the leased equipment and tools.
 22 (c) All claims for wages of mechanics and laborers employed in or
 23 about a shop, mill, wareroom, storeroom, manufactory or structure,
 24 bridge, reservoir, system of waterworks or other structure, sidewalk,
 25 walk, stile, well, drain, drainage ditch, cistern, or any other earth
 26 moving operation shall be a lien on all the:
 27 (1) machinery;
 28 (2) tools;
 29 (3) stock;
 30 (4) material; or
 31 (5) finished or unfinished work;
 32 located in or about the shop, mill, wareroom, storeroom, manufactory
 33 or other building, bridge, reservoir, system of waterworks, or other
 34 structure, sidewalk, walk, stile, well, drain, drainage ditch, sewer,
 35 cistern, or earth used in a business.
 36 (d) If the person, firm, limited liability company, or corporation
 37 described in subsection (a) is in failing circumstances, the claims
 38 described in this section shall be preferred debts whether a claim or
 39 notice of lien has been filed.
 40 (e) Subject to subsection (f), a contract:
 41 (1) for the construction, alteration, or repair of a Class 2 structure
 42 (as defined in IC 22-12-1-5);

C
o
p
y



(2) for the construction, alteration, or repair of an improvement on the same real estate auxiliary to a Class 2 structure (as defined in IC 22-12-1-5);

(3) for the construction, alteration, or repair of property that is:

(A) owned, operated, managed, or controlled by a:

(i) public utility (as defined in IC 8-1-2-1);

(ii) municipally owned utility (as defined in IC 8-1-2-1);

(iii) joint agency (as defined in IC 8-1-2.2-2 **or IC 8-1-8.9-8**);

(iv) rural electric membership corporation formed under IC 8-1-13-4;

(v) rural telephone cooperative corporation formed under IC 8-1-17; or

(vi) not-for-profit utility (as defined in IC 8-1-2-125); regulated under IC 8; and

(B) intended to be used and useful for the production, transmission, delivery, or furnishing of heat, light, water, telecommunications services, or power to the public; or

(4) to prepare property for Class 2 residential construction; may include a provision or stipulation in the contract of the owner and principal contractor that a lien may not attach to the real estate, building, structure or any other improvement of the owner.

(f) A contract containing a provision or stipulation described in subsection (e) must meet the requirements of this subsection to be valid against subcontractors, mechanics, journeymen, laborers, or persons performing labor upon or furnishing materials or machinery for the property or improvement of the owner. The contract must:

(1) be in writing;

(2) contain specific reference by legal description of the real estate to be improved;

(3) be acknowledged as provided in the case of deeds; and

(4) be filed and recorded in the recorder's office of the county in which the real estate, building, structure, or other improvement is situated not more than five (5) days after the date of execution of the contract.

A contract containing a provision or stipulation described in subsection (e) does not affect a lien for labor, material, or machinery supplied before the filing of the contract with the recorder.

(g) Upon the filing of a contract under subsection (f), the recorder shall:

(1) record the contract at length in the order of the time it was received in books provided by the recorder for that purpose;

C
o
p
y



(2) index the contract in the name of the:

(A) contractor; and

(B) owner;

in books kept for that purpose; and

(3) collect a fee for recording the contract as is provided for the recording of deeds and mortgages.

(h) A person, firm, partnership, limited liability company, or corporation that sells or furnishes on credit any material, labor, or machinery for the alteration or repair of an owner occupied single or double family dwelling or the appurtenances or additions to the dwelling to:

(1) a contractor, subcontractor, mechanic; or

(2) anyone other than the occupying owner or the owner's legal representative;

must furnish to the occupying owner of the parcel of land where the material, labor, or machinery is delivered a written notice of the delivery or work and of the existence of lien rights not later than thirty (30) days after the date of first delivery or labor performed. The furnishing of the notice is a condition precedent to the right of acquiring a lien upon the lot or parcel of land or the improvement on the lot or parcel of land.

(i) A person, firm, partnership, limited liability company, or corporation that sells or furnishes on credit material, labor, or machinery for the original construction of a single or double family dwelling for the intended occupancy of the owner upon whose real estate the construction takes place to a contractor, subcontractor, mechanic, or anyone other than the owner or the owner's legal representatives must:

(1) furnish the owner of the real estate:

(A) as named in the latest entry in the transfer books described in IC 6-1.1-5-4 of the county auditor; or

(B) if IC 6-1.1-5-9 applies, as named in the transfer books of the township assessor;

with a written notice of the delivery or labor and the existence of lien rights not later than sixty (60) days after the date of the first delivery or labor performed; and

(2) file a copy of the written notice in the recorder's office of the county not later than sixty (60) days after the date of the first delivery or labor performed.

The furnishing and filing of the notice is a condition precedent to the right of acquiring a lien upon the real estate or upon the improvement constructed on the real estate.

**C
O
P
Y**



(j) A lien for material or labor in original construction does not attach to real estate purchased by an innocent purchaser for value without notice of a single or double family dwelling for occupancy by the purchaser unless notice of intention to hold the lien is recorded under section 3 of this chapter before recording the deed by which the purchaser takes title.

SECTION 12. IC 32-28-3-5, AS ADDED BY P.L.101-2002, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. (a) As used in this section, "lender" refers to:

- (1) an individual;
- (2) a supervised financial organization (as defined in IC 24-4.5-1-301);
- (3) an insurance company or a pension fund; or
- (4) any other entity that has the authority to make loans.

(b) The recorder shall record the statement and notice of intention to hold a lien when presented under section 3 of this chapter in the miscellaneous record book. The recorder shall charge a fee for recording the statement and notice in accordance with IC 36-2-7-10. When the statement and notice of intention to hold a lien is recorded, the lien is created. The recorded lien relates back to the date the mechanic or other person began to perform the labor or furnish the materials or machinery. Except as provided in subsections (c) and (d), a lien created under this chapter has priority over a lien created after it.

(c) The lien of a mechanic or materialman does not have priority over the lien of another mechanic or materialman.

(d) The mortgage of a lender has priority over all liens created under this chapter that are recorded after the date the mortgage was recorded, to the extent of the funds actually owed to the lender for the specific project to which the lien rights relate. This subsection does not apply to a lien that relates to a construction contract for the development, construction, alteration, or repair of the following:

- (1) A Class 2 structure (as defined in IC 22-12-1-5).
- (2) An improvement on the same real estate auxiliary to a Class 2 structure (as defined in IC 22-12-1-5).
- (3) Property that is:
 - (A) owned, operated, managed, or controlled by:
 - (i) a public utility (as defined in IC 8-1-2-1);
 - (ii) a municipally owned utility (as defined in IC 8-1-2-1);
 - (iii) a joint agency (as defined in IC 8-1-2.2-2 **or IC 8-1-8.9-8**);
 - (iv) a rural electric membership corporation formed under IC 8-1-13-4;

C
o
p
y



(v) a rural telephone cooperative corporation formed under IC 8-1-17; or

(vi) a not-for-profit utility (as defined in IC 8-1-2-125); regulated under IC 8; and

(B) intended to be used and useful for the production, transmission, delivery, or furnishing of heat, light, water, telecommunications services, or power to the public.

SECTION 13. IC 32-28-3-16, AS ADDED BY P.L.101-2002, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 16. (a) This section applies to a construction contract for the construction, alteration, or repair of a building or structure other than:

(1) a Class 2 structure (as defined in IC 22-12-1-5) or an improvement on the same real estate auxiliary to a Class 2 structure (as defined in IC 22-12-1-5); or

(2) property that is:

(A) owned, operated, managed, or controlled by a public utility (as defined in IC 8-1-2-1), a municipally owned utility (as defined in IC 8-1-2-1), a joint agency (as defined in IC 8-1-2.2-2 or IC 8-1-8.9-8), a rural electric membership corporation formed under IC 8-1-13-4, rural telephone cooperative corporation formed under IC 8-1-17, or a not-for-profit utility (as defined in IC 8-1-2-125) regulated under IC 8; and

(B) intended to be used and useful for the production, transmission, delivery, or furnishing of heat, light, water, telecommunications services, or power to the public.

(b) A provision in a contract for the improvement of real estate in Indiana is void if the provision requires a person described in section 1 of this chapter who furnishes labor, materials, or machinery to waive a right to:

(1) a lien against real estate; or

(2) a claim against a payment bond;

before the person is paid for the labor or materials furnished.

(c) A provision in a contract for the improvement of real estate in Indiana under which one (1) or more persons agree not to file a notice of intention to hold a lien is void.

SECTION 14. IC 32-28-3-18, AS ADDED BY P.L.101-2002, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 18. (a) This section applies to a provider of labor, materials, or equipment under a contract for the improvement of real estate that conditions the right of the provider to receive payment on

C
o
p
y



the obligor's receipt of payment from a third person with whom the provider does not have a contractual relationship.

(b) This section does not apply to a construction contract for the construction, alteration, or repair of the following:

- (1) A Class 2 structure (as defined in IC 22-12-1-5).
- (2) An improvement on the same real estate auxiliary to a Class 2 structure (as defined in IC 22-12-1-5).
- (3) Property that is:
 - (A) owned, operated, managed, or controlled by a:
 - (i) public utility (as defined in IC 8-1-2-1);
 - (ii) municipally owned utility (as defined in IC 8-1-2-1);
 - (iii) joint agency (as defined in IC 8-1-2.2-2 or **IC 8-1-8.9-8**);
 - (iv) rural electric membership corporation formed under IC 8-1-13-4;
 - (v) rural telephone cooperative corporation formed under IC 8-1-17; or
 - (vi) not-for-profit utility (as defined in IC 8-1-2-125);
 - regulated under IC 8; and
 - (B) intended to be used and useful for the production, transmission, delivery, or furnishing of heat, light, water, telecommunications services, or power to the public.
- (c) An obligor's receipt of payment from a third person may not:
 - (1) be a condition precedent to;
 - (2) limit; or
 - (3) be a defense to;

the provider's right to record or foreclose a lien against the real estate that was improved by the provider's labor, material, or equipment.

SECTION 15. IC 34-30-2-24.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 24.2. IC 8-1-8.9-48(b) (Concerning officers of, or persons acting on behalf of officers of, eligible units or joint agencies that participate in electric utility projects or joint projects).**

SECTION 16. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "commission" refers to the Indiana utility regulatory commission.

(b) Notwithstanding IC 8-1-8.9-53, as added by this act, the commission shall adopt any rules to implement IC 8-1-8.9, as added by this act, in the same manner as emergency rules are adopted under IC 4-22-2-37.1. Rules adopted under this SECTION must be adopted not later than June 1, 2004. A rule adopted under this

**C
O
P
Y**



1 **SECTION expires on the earlier of:**
 2 **(1) the date the rule is adopted by the commission under**
 3 **IC 4-22-2-24 through IC 4-22-2-36 to implement IC 8-1-1-8.9,**
 4 **as added by this act; or**
 5 **(2) January 1, 2006.**
 6 **(c) This SECTION expires January 1, 2006.**
 7 **SECTION 17. An emergency is declared for this act.**

**C
o
p
y**

